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THE SOVIET UNION AND INTERNATIONAL LAW

A study based on the Legislation, Treaties and Foreign Relations of the Union of Socialist Soviet Republics

By

T. A. TARACOUZIO

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FOREWORD

In becoming a member of the League of Nations in September, 1934, the Union of Socialist Soviet Republics has entered upon new international relations and responsibilities. This act shows a marked modification of attitude toward the League, and other changes have followed the entering into diplomatic relations with the United States of America in 1933. The present work sets forth the principles of international law as applied by the Soviets up to September, 1934. Already the U.S.S.R. had by virtue of its existence in a world of national states been forced or had found it advantageous to deal with its neighbors, immediate and remote. To enter this relationship a degree of conformity to accepted principles of international law was essential. This conformity might, however, be regarded by the U.S.S.R. as merely a temporary expedient during the period of transition of the national state to a form acceptable to the Soviet régime. Frequently the nationalistic phraseology is accepted while by Soviet interpretation the term may be given a new signification or one at variance with the accepted meaning. This is the case particularly in some of the diplomatic and consular fields. The elimination of class distinctions in society could not fail to have an effect upon the traditional ideas as to diplomatic gradations. One of the most striking features of Soviet policy has been advocacy of complete disarmament, land, maritime, and aërial, in contrast to the policy of most states, which have favored varying degrees of mere limitation of armament. Mr. Taracouzio has treated of the significance of the experiment of the U.S.S.R. as related to the international law of war and peace, and thus has made a valuable contribution to the history of international relations as shown in one of the most radical political changes in modern times.

George Grafton Wilson

PREFACE

AN evaluation of any legal system in the course of active development is a hazardous undertaking. This is particularly true as regards the impingement of Communism upon international law. Previous experiments in Communism, although not without international repercussions, have been either on too small a scale, or of too short duration, seriously to affect the settled course of international relations. In Russia, however, Communism has been embraced by a nation of more than a hundred and sixty millions, and the state thus established has endured for over fifteen years. Although these factors assure an international rôle for the Soviets, sufficient time has not yet elapsed for the historian to write with the proper perspective. Moreover, the attitude of the Soviets has not yet crystallized, but is still undergoing fundamental changes, which are reflected in the altered position which they hold in the eyes of the rest of the world. For these reasons the present study makes no pretense at approbation or censure of the Soviet attitude towards international law. Its object is rather to discover as far as possible the bases underlying the Soviet interpretation of the principles involved, and to disclose the degree and the fashion of their actual application in the international life of the U.S.S.R. For this double purpose an examination of the purely political aspects of the international conduct of the Soviets does not suffice, since the foreign as well as the domestic policy of a nation is all too frequently merely an irrational, even opportunistic, attempt at adjustment to transitory but compelling conditions.

The materials on which the present study is based may be divided broadly into the following four groups: (1) The works of Karl Marx, Frederick Engels, and Nicolas Lenin, (2) Soviet national laws, regulations and departmental instructions, (3) International treaties entered into by the Soviets, and (4) Works of Soviet authorities on international law. Whereas the theoretic

background for the Soviet conceptions in this field is thus sought in the writings of the early exponents of socialism, their actual crystallization is to be found chiefly in current domestic laws and international agreements, since the court practice of the Soviets affords no data of any value. The legal texts relied upon as the basis of this study are those found in the Soviet official publications. In most instances translations have had to be made by the author, whose policy in this connection has been to follow the original as closely as possible, even in sentence structure, despite the frequently obscure phraseology. In the appended bibliography an attempt has been made to include the more important material not directly germane to the study itself, yet pertaining thereto.

The author acknowledges his appreciation to the Members of the Bureau of International Research of Harvard University and Radcliffe College, under whose auspices this study has been carried out. He is especially indebted to its Chairman, Professor George Grafton Wilson, for many helpful suggestions, and to Professor Manley O. Hudson of the Harvard Law School, who originally inspired this work. The author remembers with profound gratitude the invaluable criticism and suggestions of Dr. Eleanor Wyllys Allen in the preparation of this book. Professor Michael Karpovich of Harvard University was kind enough to read the proof of the bibliography. The author's thanks are also due to Professor Eldon R. James of the Harvard Law School, whose readiness to coöperate with the Bureau enabled the author to devote part of his time to the work appearing herewith.

T. A. T.

Harvard Law School,
Cambridge, Massachusetts.
Summer, 1934

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THE SOVIET UNION AND INTERNATIONAL LAW

Chapter I

INTRODUCTORY

It is a commonplace that the World War provided an exacting test of the precepts of international law governing war and neutrality. Many of the traditional rules were found no longer adequate to changed conditions. The law had been outstripped by the growth of the civilization it no longer reflected. This was not a sudden issue; it was only that the war brought the discrepancy to a crux. So, too, the rules governing the ordinary intercourse of states had been vaguely realized to be inadequate, but a direct challenge of these ancient shibboleths was furnished for the first time by the Russian Socialist Federated Soviet Republic. For the first time the principles of Karl Marx found themselves materialized in a state, and a state which, because of its size, geographic position and economic resources, could not be ignored in the councils of the world. However disconcerting the questionings of this infant state—born under auspices so strange as to be incomprehensible to most, and still in a "transition" stage of development—they must be heeded and dealt with in one fashion or another.

Inadequacy of International Law

This realization of the inadequacy of the traditional rules of international law was borne in upon the world at a time when the physical, moral, and economic devastation of the years 1914–18 had intensified the fundamental longing of humanity for peace. For the effectuation of this great aim international law still appeared to be the only possible system of doctrines. Hence a vigorous, coördinated effort has been made to readapt the old system to the new circumstances, both by discarding outworn rules and by introducing new principles. The establishment of the League of Nations, attempts to codify certain accepted doctrines, the introduction of the idea of the judicial settlement of international disputes are illustrations of the sincere coöperation

among the nations in seeking to insure peace through law. Parallel attempts are being made in the fields of science and education.

However widely the aspirations of the Marxian state may differ from those of states of the older political theory, they coincide so far as the desire for peace is concerned. Different as is the spirit of capitalistic and communistic philosophy, both systems are constrained to rely upon the precepts of international law as the only means of bringing about harmony among the nations. However, conditions of perpetual peace in the Marxian theory do not at all resemble those contemplated by the adherents of conservative thought. Hence, international law, to serve as a means to this unorthodox end, must be made to undergo certain distortions. A conscious attempt to modify the principles of international law in accordance with communist theories is now being made by the authorities of the Soviet Régime.

Character and Scope of Bolshevist Régime

The importance of a study of the communist attitude towards the principles of international law lies in the fact that the Bolshevist Régime is itself a program of an international policy. Though particular in its application to the concrete problems of the Dictatorship of the Proletariat existing today in the former Russian Empire, it is international in the universality of its general principles, which are expected to prevail in every nation where the proletariat is active.

Not only does the scope of the Bolshevist Régime extend beyond the confines of Russia; it is not even a spontaneous development from the peculiar conditions that prevailed in Russia during the Revolution of 1917. The history of Western Europe during the last century and a half is not only the political record of sovereignties and wars, but also the record of class struggles, of one class attempting to liberate itself from the yoke of another. The Jacobins and the short-lived Paris Commune in France, and the much earlier Cromwellian Revolution in England are all vivid illustrations of crystallized forms which class struggle has assumed in the past. They prove that the struggle of classes was a vital social issue long before the Bolshevist Revolution of 1917. Hence the present Soviet Régime is not a

novel phenomenon in so far as it involves a revolutionary dictatorship.

Here the analogy ends, however. With the exception of the Paris Commune, the forerunners of the Bolshevist Régime were national democratic dictatorships of the bourgeoisie in semi-feudal, capitalistic countries, and not dictatorships of the proletariat in socialized unions of workers and peasants. Furthermore, the militant revolutionary socialists of the Bolshevist Régime represent organized opposition at once to capitalism and moderate socialism. The latter, as epitomized by the old labor movement, controlled by skilled labor and animated by bourgeois ideology, has always concerned itself with middle-class reforms. Throughout the whole history of class struggle, it has been nothing but a conscious compromise with capitalism. As a social-patriotic expression of bourgeois ideology, it cultivated the sentiment of militant nationalism, which has always been one of the natural developments under any bourgeois régime. From the point of view of the communist philosophy, this sentiment of nationalism is not only unacceptable, but even definitely counter-revolutionary.

Not only in its essential characteristics, but in its scope and influence as well, has the Bolshevist dictatorship differed from its predecessors. Short-lived as they all were, confined within the geographic limits of a single state, they were important only in their effect upon the social order of that political entity, and never influenced the principles of international relations or the development and progress of the law of nations.

On the other hand, more than fifteen years have already passed since the abstract theories of Karl Marx first found their practical materialization under the Dictatorship of the Proletariat in Russia. Furthermore, in theory the application of this régime is not confined within the geographical boundaries of a single state. It involves a broad program of world revolution, as has already been evidenced by activities in Germany, Hungary, Finland, Italy, Turkey, China, and the Baltic States. This attempt to put Marxian theories into practice on a world-wide scale has led to a new discovery: the difficulties in the way of the more rapid extra-territorial expansion of the Communist Régime lie not so

much in the ideas themselves as in the interpenetration of the principles of the law of nations by the new conception of international relations born of such theories.

Communist World

A few remarks on the communist conception of the world are necessary to understand the position in which the Soviets find themselves in their attempt to bring about a reconstruction of the universe in conformity with the ideas expounded by Marx and Engels. The history of the past is viewed not in terms of political entities, but in those of class interests. An analysis of the communist theory of class struggle shows that the leaders of the U.S.S.R. have simply extended the Darwinian theory of the struggle for existence in the animal world to the sociological relationship of men under the Régime of the Dictatorship of the Proletariat, in the fields of industry, commerce, and finance. To quote Enrico Ferri:

Past

"Darwinism has demonstrated that the entire mechanism of animal evolution may be reduced to the struggle for existence between individuals of the same species on the one hand, and between each species and the whole world of living beings . . .

"In the same way all the machinery of social evolution has been reduced by Marxian Socialism to the law of the struggle between classes." [1]

Future

The ultimate aim envisaged by the communists is a class-less, state-less, law-less world commonwealth, wherein international relations and international law are alike inconceivable. The abolition of class distinctions will be reached when

"The working class in the course of its development, substitutes for the old order of civil society an association which will exclude classes and their antagonizers, and there will no longer be political power, properly speaking, since political power is simply the official form of antagonization of civil society." [2]

Frederick Engels explains how this will take place:

"The Proletariat seizes the machinery of the State and converts the means of production first into State property. But by so doing it extinguishes itself as proletariat; by so doing it extinguishes all class distinctions and class contrasts; and along with them the State as well. The society that existed until then, and that moved in class contrasts,

[1] Ferri, *Socialism and Modern Science*, p. 74.
[2] Marx, *Poverty of Philosophy*, pp. 135–136.

needed the State, *i.e.*, an organization of whatever class happened at the time to be the exploiting class, for the purpose of forcibly keeping the exploited class in the condition of subjection."[3]

Such being the justification for the existence of the state, the state is bound to disappear when class distinctions disappear. Engels continues:

"As soon as there is no longer any social class to be kept down; as soon as, together with class rule and the individual struggle for life founded in the previous anarchy of production, the conflicts and excesses that issued therefrom have been removed, there will no longer be any necessity for applying such special means of repression as the State. The first act, wherein the State appears as the real representative of the whole body social at the moment of seizure of the means of production in the name of society, is also its last independent act as the State. The interference of the State in social reactions becomes superfluous in one domain after another, and falls of itself into desuetude. The place of a government over persons is taken by the administration of things and the conduct of the processes of production. The State is not 'abolished,' it dies out."[4]

The fate of the state after it ceases to function is foretold by Marx and Engels:

"The society that is to reorganize production on the basis of a free and equal association of producers, will transfer the machinery of State where it will then belong: into the Museum of Antiquities beside the spinning wheel and the bronze axe."[5]

Not only are the class and state differentiations doomed to disappearance, but the law as well. Engels maintains that the legal system is a mere superstructure erected upon a definite economic organization of society, which is independently determined by the multiplicity of factors involved in production.[6] The law, instead of being viewed as a means of regulating brotherly relations among men, is thus detached and lifted above the community which it is supposed to serve. It becomes a non-essential, only provisionally, temporarily, necessary. Such is the law for Engels. Similarly, Marx says:

[3] Engels, *Anti-Dühring*, p. 249.
[4] *Ibid.*, pp. 249–250.
[5] Marx and Engels, *The Origin of the Family, Private Property and the State*, p. 63.
[6] Letter to Mehring, of July 14, 1893.

"Society is not based on law. This is a plain phantasy of jurists. On the contrary, law must be based on society; law, instead of the expression of the will of the individual, must be an expression of general interests and necessities resulting from a given method of economic production." [7]

The imperative force of law depends upon the relationship between law on the one hand and social ethics and morality on the other. Early legal science inclined to the theory that law was in principle, and necessarily, inconsistent with social ethics. With the advancing tide of democracy, however, the classes that had denounced the law gradually established themselves in power, and there resulted a considerable rapprochement between conceptions of law and social ethics. Law as a general rule coincides with the social ethics of the ruling classes, so when the proletariat is in power, it is to be expected that their laws will correspond with their proletarian ethics and morality. Under such a régime, violation of the law by the capitalist class will obviously not be tolerated. In the reverse situation, when the law-making authority is vested in the capitalist class, logically the proletariat should consider itself ethically bound by the laws promulgated by its class enemies. This, however, is not so, for the proletariat considers that its ethics and morality should always be superior to the bourgeois law, because, in opposing such law, it serves not only its own selfish interests, but those of toiling masses the world over. Thus the proletariat justifies itself in regarding its social ethics and morality as paramount over the provisions of inconsistent law. Hence, for the Soviets, the whole problem of the relation between social ethics and the law is regarded as a "bourgeois" tradition, lacking significance in a communist society.

Not only does the theory of the law and of its imperative force differ widely in bourgeois and communist interpretation, but its application is based upon different principles. To the non-communist the law is a measure to be meted out equally to all men, who thus enjoy equal rights under the law. To the communist the dispersonification of man by complete absorption in the class, results in every law becoming a class law. Indeed, the purpose of law is the protection of the interests of the ruling

[7] Marx, *Sobr. Soch.*, III, p. 359.

class. Political states have been formed for the purpose of keeping in submission the oppressed class, the law being one of the instrumentalities for this oppression. According to this philosophy, there was no law in the pre-class community of men, and there will be no law in the class-less commonwealth of men which is expected to come.

Present

By communists the present stage reached in the evolution of the perfect society is viewed as an acute struggle of classes, which has already advanced so far that the world is expected to reach the culmination point of revolutionary progress very soon. Within the Soviet Union, the proletarian class is already victorious; without, is a vast arena of struggle in which the protagonists are the capitalist and proletarian classes with their less important partisans. The old "labor movement" has been transformed into revolutionary socialism, directed by a pseudo-industrial Russian proletariat. Upon the proletariat and peasantry depends the success of the Revolution, for distrust of the bourgeoisie runs like a red thread through the policy of the Communist Régime. The Constitution of the R.S.F.S.R., adopted on July 10, 1918, says that

"The principal object of the Constitution of the R.S.F.S.R., which is adapted to the present transition period, consists in the establishment of the dictatorship of the urban and rural proletariat and of the poorest peasantry, in the form of the strong All-Russian Soviet Power, with the aim of securing the complete suppression of the bourgeoisie, the abolition of the exploitation of man by man, and the establishment of socialism, under which there shall be neither class division nor State authority." [8]

The Constitution of the Union of Socialist Soviet Republics opens with the following solemn declaration:

"Since the time of the formation of the Soviet Republics, the states of the world have divided into two camps: the camp of capitalism and the camp of socialism.

"There—in the camp of capitalism—are national enmity and inequality, colonial slavery and chauvinism, national oppression and pogroms, imperialist brutalities and wars.

"Here—in the camp of socialism—are mutual confidence and peace, national freedom and equality, dwelling together in peace, and the

[8] *Sborn. Dekretov 1917–1918 gg.*, p. 64.

brotherly collaboration of peoples. The attempts of the capitalist world for a number of decades to settle the question of nationality by the combination of the free development of peoples with the system of exploitation of man by man have proved fruitless. On the contrary, the skein of national contradictions is becoming more and more tangled, threatening the very existence of capitalism. The bourgeoisie has been incapable of organizing the collaboration of peoples. Only in the camp of the Soviets, only under the conditions of the dictatorship of the proletariat, mustering around itself the majority of the population, has it proved possible to destroy national oppression at the roots, to establish an atmosphere of mutual confidence and lay the foundation of the brotherly collaboration of peoples . . ."[9]

The first step in the fundamental reconstruction of the existing social order is exemplified in the slogan of the Soviets: "Proletarians of the World, unite!"

International Relations

With such a conception of history—past and future—it is not surprising that the communists emphasize the rôle of social factors in the shaping of international relations. According to Marx the social factors which influence the policies of nations

Abstract Basis

are either of an abstract, intellectual character, or of a concrete, materialistic nature. For those of the first group to become elements in international relations necessarily presupposes the existence of a certain degree of unanimity in the appraisal of values, as well as in legal, ethical or political convictions, for nations are unwilling to coöperate on abstract issues involving no common values. The political aims pursued by the Soviets clearly indicate their antagonistic attitude toward the whole social order of the rest of the world. Hence there can be no solidarity of ideas, nor any intellectual unity between the communist ideology and the non-communist political philosophy. Were it not for certain humanitarian and artistic concerns of civilized nations, which are participated in by the Soviets, as regards the association of the U.S.S.R. with the rest of the world, the whole complex of relations based upon uniformity of abstract social factors would logically terminate in a complete cessation of international intercourse.

Practical Factors

As regards the social factors of a practical nature, embodying economic, commercial, and industrial necessities, self-interest

[9] *Sist. Sobr. Deistv. Zak. S.S.S.R.*, I, p. 4.

takes the place of uniformity of ideals in counselling intercourse between the Soviets and the outside world. Inasmuch as the Communist Régime looks to the ultimate nationalization of the whole economy of the state, international coöperation to the end of improving the living and working conditions of the toiling masses is perfectly admissible, and even welcomed by the Communist Régime. Hence international relations for furthering improvements in postal and telegraphic service, or railroad and maritime transportation, or contemplating the exploitation of technical concessions, or the standardization of the metric system of weights and measures are readily participated in by the Soviets. The desirability of international relations looking toward ultimate material benefits embodying sociological and *quasi*-legal conceptions, such as commercial treaties, customs unions, international agreements for the protection of industrial property, and understandings regarding private rights is not less evident to the Soviets. Here, however, according to socialist philosophy, international coöperation on the part of the communist state is admissible only upon necessity, and this compromise with the strict theory is controlled by the practical considerations of each individual case.

Foreign relations envisaging trade agreements and economic coöperation have been admitted as essential for the Soviets in their contemporary situation, and hence the R.S.F.S.R., and later the U.S.S.R., have found themselves involved in the problem of working out the conditions under which economic relations with non-communist nations can be carried on. Their practice in this regard suggests that the Soviet Government is motivated solely by the practical considerations of the moment and not by juridical reasoning founded in the traditions of the well-established practices of international law.[10] Thus international relations for the communists are reduced to little more than the mutual coöperation of toiling masses in their common opposition to capitalism.

[10] See the address delivered by Chicherin at the opening of the International Economic Conference at Genoa on April 10, 1922 (infra, p 32), or the reaction of the Soviet Government to the "Seventeen Points" of Japan of August, 1921, or to the conditions of the recognition of the Soviet Government as submitted by Charles E. Hughes on March 21, 1923.

International Law of the Transition Period

With the success of the Revolution and the advent of a single world-wide, denationalized, class-less society, there will be no place for a system of law regulating the international life of independent states. International law will be converted into a purely domestic inter-soviet law, a federal law for a world-wide Union of Socialist Soviet Republics. However, the communists were disappointed in their hopes for the immediate realization of this world empire. Instead they found themselves surrounded by states that refused to conform to their political philosophy, and confronted with the alternative of complete isolation, or compromise with the existing customs governing the foreign relations of states. Economic necessity dictated the establishment of intercourse with outside states. Hence communist lawmakers, instead of attempting by a single official denunciation to sweep away the existing complex of rules governing international relations, contented themselves with invoking international law as expediency might suggest,[11] and in the meantime busied themselves with transfusing its tenets with their own political philosophy. The result is a new school of international law which may be designated the Soviet "International Law of the Transition Period." It is still too young to exert much influence on the well-established law of nations fostered by non-communist thought, but its reactions to the more important conceptions of the traditional international law may be traced in the national laws, the international treaties and the practice of the Soviets.

It should be borne in mind that international law, instead of being regarded as a permanent system of recognized (though changing) principles, aiming at the progressive improvement of mutual understanding among states, is for the communist the mere exponent of a temporary adjustment. It may be resorted to for the time being to further the international organization of national laboring classes in their common struggle for universal

[11] "The situation became sufficiently ambiguous. On the one hand, Soviet Russia openly and loudly declared its denunciation of all treaties inherited from Tsarism and the Government of Kerensky, of all secret conventions, military debts, privileges of exploitation and imperialist obligations, and on the other, its official representatives often demanded the execution of minor agreements, referring to the fact that beneath the text was affixed the seal and the signature of the Imperial Ambassador [*sic*]." (Korovin, *Mezhdunarodnoe Pravo Perekhodnogo Vremeni*, 2-e Izd., p. 5.)

proletarian supremacy. The admission of the need for some sort of rules to govern international relations during the "transition" period is a conscious concession on the part of the communists. Hence inconsistency between their abstract theories and their actual practice is no matter for surprise.

CHAPTER II

SOVIET THEORY OF INTERNATIONAL LAW IN GENERAL

Communist Conception of International Law

THEORETICALLY the communist conception of law as a law of inequality, of the state as a struggle of classes, and of international relations as a mutual coöperation of toiling masses in their common opposition to capitalism, results in a novel interpretation of international law as *a provisional inter-class law which aims to further the interests of organized national laboring classes in their common struggle for proletarian world supremacy.* Thus defined, international law does not fall within the scope of so-called natural law, nor is it a strictly legal science. It is not applicable to the intercourse of states exclusively, yet it does not allow individuals to become the sole persons in international law. The applicability of international law thus defined to the unprecedented circumstances in which the Soviet Union finds itself today, can be tested only by a further study of the actual position assumed by the Soviets towards the more important problems of international law.

Genesis of International Law

There are two major schools of thought regarding the genesis of international law: that of the naturalists and that of the positivists. The former derive the law of nations from precepts of natural law binding upon all mankind because of their innate sanctity. Such a theory is incompatible with the Marxian political philosophy, because for a Marxist it is impossible to conceive of an ideal law uniform for all classes. The latter look to the actual practices of nations and build up international law much as the common law of England evolved from current, well-established practices. This theory of the historical school has apparently been accepted by way of compromise as a point of departure for communist innovations in the science of international law. Even this has been possible only upon condition that

the evidence of usage be viewed through the prism of the collective psychology of the masses, and not be regarded as a reflection of principles posited upon political or national unity. Thus for the Soviets the class self-consciousness of the ruling order is the fountain of international law.

Sources of International Law

The substance of this law may be sought in treaties and diplomatic documents, national laws, court decisions, and learned works. Custom, implying a usage rooted in pre-Soviet days, is naturally not accepted by communist statesmen as a reliable source. However, since refusal on the part of the Soviet authorities to compromise with their communist theories in their intercourse with non-communist states by the actual acceptance of "unwritten" principles of international law would result in an open conflict with these states, the Soviet Government has been forced to the policy of referring to custom as an authoritative source, whenever the interests of the Soviets call for this concession.[1] The Soviet point of view regarding custom as evidence of the tenets of international law influences their conception of the significance of treaties likewise, for while in the practice of non-communist states a treaty is often merely a document declaratory of the international practice, in the U.S.S.R. the treaty *per se* has become the basic source of international law. Moreover, as the multipartite convention is more apt to represent the crystallization of traditional theories (since it is participated in by more states), the tendency of the Soviet State has been towards the specific type of bilateral treaty which affords freer opportunity for international bargaining. This trend has been particularly noticeable since 1922, after the unsuccessful attempts at Genoa[2] and at The Hague[3] to secure coöperation

Custom

Treaties

[1] Thus, Art. 3 of the Treaty between the R.S.F.S.R. and Afghanistan of Feb. 28, 1924, stipulates that "the embassies and consulates of Each Contracting Party shall enjoy all diplomatic privileges, in conformity *with the customs of international law.*" (*Sborn. Deistv. Dogov.*, I, 1924, p. 40); *see also* Art. 4 of the Treaty of Commerce between the U.S.S.R. and Estonia of May 17, 1929 (*Sobr. Zak. i Rasp. S.S.S.R.*, 1929, II, p. 917; XCIV, 323, L.N.T.S.).

[2] This conference of April, 1922, was called by Briand and Lloyd George in an attempt to settle outstanding economic problems by the participation of all former Allied and Associated Powers. The Soviet Government demanded reparations for the losses incurred during the Allied interventions in 1918–1921, in return for an engagement on its part to reimburse foreign nationals for the value of their expropriated property. The Soviet demands proved unacceptable and the contemplated multipartite agreement failed to materialize.

[3] At the conference at The Hague in June-July, 1922, another Soviet pro-

between the Soviet Government and the former Allied and Associated Powers. A long series of separate agreements between the Soviets and individual non-communist states is an indication that for the communists the treaty acquires greater value as a source of international law when it embodies a specific engagement between two states.

Other Sources

The practice of the Soviets is not conclusive as to their attitude toward other time-honored sources of international law. There is a suggestion, however, that the communist authorities in the U.S.S.R. do not entirely overlook the importance of diplomatic documents, national legislation, court decisions, and learned works as factors in shaping the law of nations: the Central Executive Committee and the Council of Peoples' Commissaries issued a series of regulations concerning diplomatic and consular officers; [4] the Soviet Government reacted emphatically to the decision in the case of *Luther* v. *Sagor;* [5] in the institutions of higher learning special departments for the study of international relations have been established, and among the official publications are such periodicals as "International Annals," "International Life," a "Collection of Treaties, Agreements, and Conventions Concluded between the R.S.F.S.R. and Foreign States," and a similar collection of international agreements entered into by the Union of Socialist Soviet Republics.[6]

Persons in International Law other than States

Whereas the non-communist authorities agree upon the sources of international law, there is no unanimity even among them as

posal was refused by the Allies, this time a suggestion for world disarmament and a request for *de jure* recognition as the price for payment of the debts incurred by the former Russian Imperial and the Provisional (Kerensky) Governments. Thus, a second attempt to bring the Soviets into a multipartite agreement also resulted in failure.

[4] *Cf.* the Decrees of the Council of Peoples' Commissaries No. 393 of Oct. 8, 1921, and No. 275 of Jan. 2, 1923, on Diplomatic Passports (*Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1921, pp. 499–500, and 1923, pp. 277–278 respectively); Decrees No. 302 and No. 303 of June 30, 1921, and No. 615 of July 2, 1923, on Foreign Diplomatic Representatives in R.S.F.S.R. (*ibid.*, 1921, pp. 397, 399, and *ibid.*, 1923, p. 1131 respectively); Decree No. 558 of Oct. 14, 1921, on Diplomatic Mail (*ibid.*, 1921, p. 677); Instructions for Consular Officers issued by the People's Commissariat for Foreign Affairs of June 6, 1921 (*ibid.*, 1921, p. 742). *See also* Chapter VII, on "Diplomacy."

[5] [Gr. Brit.] [1921], 3 K.B. 532.

[6] The Russian titles are respectively: *"Meshdunarodnaia Letopis',"* *"Meshdunarodnaia Zhizn',"* and *"Sbornik Deistvuiushchikh Dogovorov, Soglashenii, i Konvensii, zakliuchennykh s Inostrannymi Gosudarstvami."* While the first two have ceased publication, the last is referred to in the footnotes in the present study in an abbreviated form as *"Sborn. Deistv. Dogov."*

to the persons of international law. One group of jurists holds that there are no international persons except states. Another, with a very unorthodox conception of the state, refuses to regard even it as an international person. A third takes yet a different view and assumes that with states there should be associated other groups, and there are scholars who go yet further and ascribe the status of international persons even to individuals.

International Organizations

According to communistic interpretation, the state does not appear to be the only person of international law. This is evidenced by the attitude of the Soviets toward international bodies, such as the European Commission of the Danube, and the Commission on Straits which was established in conformity with the Lausanne Convention of July 24, 1923; the League of Nations;[7] the International Red Cross; Hoover's Relief Administration in Russia, with which the R.S.F.S.R. entered into special agreements.[8]

The Pope

It is surprising to find that for a definite practical purpose even the Pope has been granted the status of a person in international law by a régime opposed to any church as a religious institution. When the famine in the R.S.F.S.R. reached alarming proportions in 1920–21, the Pope offered to extend assistance to the stricken areas through the Catholic missions in Russia. The Soviets did not hesitate to enter in negotiations with him to determine the conditions under which this assistance could be effected, with the result that in 1922 the representative of the R.S.F.S.R. in Italy, Vorovsky, signed an agreement with Cardinal Gasparri, representative of the Pope, regulating this matter.[9]

Labor Unions

Seeing in the purely professional intercourse among the labor unions of the world a political fact of great significance in international life, the communist government of the Soviet Union considers the organized proletarian masses, scattered throughout the non-communist states, as distinct persons in international

[7] *Cf.* Rakovsky, "Liga Natzii i S.S.S.R.," *Mezhdunarodnaia Letopis'*, 1925, XII, pp 3–20.

[8] Korovin, "Inostrannaia Filantropicheskaia Deiatel'nost' v R.S.F.S.R. i eie pravovye normy," *Sovetskoe Pravo*, 1922, p. 108.

[9] Korovin, *Sovremennoe Mezhdunarodnoe Publichnoe Pravo*, Moscow, 1926, p. 20.

law. Whereas such participation in international life by the organized proletariat is quite in harmony with the Marxian ideal of a communal basis for the future society of man, such is not the case as regards individuals. Hence, from the communist point of view, the proposal to give to the individual the character of a person in international law is an impracticable idea.

Political Entities under Disabilities

Whereas orthodox authorities differ among themselves on the point of admitting as international persons states under disabilities, and protectorates, mandated territories, self-governing dominions, etc., not only such bodies, but uncivilized and nomadic tribes as well are readily admitted according to communist philosophy. The Soviets urge recognition of their right to be considered independent political bodies, which means that they should be considered competent parties in their relations with international states, notwithstanding the fact that their modes of living and their forms of communal intercourse may not entirely square with the standards of civilization.

States as Persons in International Law

Paradoxical as it may appear, for communist as well as for conservative scholars, the prime person in international law is the state. However, there is a great difference in the definition and origin of the "state" according to the two schools. Whereas, for the latter, the state is a sovereign political unity, for the former it is an economic entity expressed in the struggle of proletarian masses against the capitalistic régime, and represented in international intercourse by the proletarian class. For the latter the society of men is the most important person in international law, because of being impressed with the form of a political state; for the former the state is accorded predominance among persons in international law because it is born of the struggle waged by organized proletarian masses against their oppressors. For the non-communist school, every state, including the Soviet State, is a distinct juridical person participating in international relations and dealing with other equal persons. For those adhering to Marxian theories this idea of an "incorporated" juridical person is unacceptable. Indeed, the whole juridical scheme of conservative thought in this regard, according to which the state is nothing but a political form of pretended class solidarity and coöperation, and the governing

authority an impartial regulating factor free from class prejudice, is inapplicable to the communists' conception of state. True to the theories of Marx, they unceasingly stress the class structure of the state. As Lenin put it,

Nature of the State

"Every state, a machine of suppression of one class by another, is nothing but the product and exponent of the irreconcilability of class interests. It is created where, when and in so far as class conflicts cannot be reconciled." [10]

The Soviet State functions as the defender of the class interests not only of the Russian but of the World Proletariat, and as such can never assume the capitalist rôle of a national authority representing "solidarity" of classes. In its early intransigent days, the R.S.F.S.R. conformed in practice to the theoretical Marxian conception of international relations. The Soviet authorities in their diplomatic communications spoke always in the name of the Proletariat of Russia and addressed themselves to the "oppressed" Proletariat of the outside world.[11] However, the Soviets soon found themselves obliged to deal with states which had not adopted either this theory of international relations, or the abstraction of state as a class struggle. Hence, in their international life they became forced to pretend to consider themselves a juridical person in the classical sense of the term, and, since no struggle *per se* can participate in international intercourse, a second aspect was accorded the state. As explained by Engels, a state *ipso facto* presupposes a communal authority which stands separately from the masses composing the community.[12] In this sense, the state for a Marxist is, in reality, a governing authority superposed upon the community and necessary for the regulation of class conflicts. According to Marx the external form of a state is a governmental machine, which forms

[10] Lenin, *Gosudarstvo i Revoliutsiia*, p. 179.

[11] *Cf.* Appeal of December 19, 1917, signed by Trotsky, then People's Commissary for Foreign Affairs, to all the working masses of Europe, to end the World War (*Sovetskii Soiuz v Bor'be za Mir*, pp. 33–35). On September 27, 1919, during the Civil War in Russia, the Soviet Government again issued an address to the proletarian organizations of France and England, and explained the supposedly peaceful policy and aims of the R.S.F.S.R. (*ibid.*, pp. 79–81). On January 28, 1920, Chicherin, in the name of the People's Commissariat for Foreign Affairs, sent a memorandum to the Proletariat of the Entente Powers, concerning the imperialistic policies of Western European states (*ibid.*, pp. 87–88).

[12] Engels, *Origin of the Family*, p. 63.

an organism of its own, separate from the community, and becoming constantly more isolated therefrom.[13] When applied to the Soviet Union, this means that the state must have a dual political personality: theoretically it is an economic struggle of classes, while practically it is a dominating political instrumentality superposed upon the community to regulate this struggle. While from the national point of view the comparative importance of these conceptions is open to dispute, there is no doubt that for international law it is the dominant regulatory aspect of the Soviet State which is of prime importance. Consequently it is this "concrete" Soviet State which the communist dictators pretend to consider in their international relations as a juridical person in the classical sense of the term.

Form of the State

In view of the ultimate disappearance of all states, envisaged by the communists, the form of the state should be a matter of indifference to them, and such it seems to be, for while themselves adopting the federated form, as the logical precursor to the future world commonwealth, they recognize simple states as well—all as temporary international phenomena in the process of self-effacement. The Constitution of the U.S.S.R., adopted in 1923, vests in the federal government certain sovereign powers within the sphere of the competence granted to it by the free will of the proletariat; but the government acts not only upon the states which are members of the confederation or union, but directly upon the citizens. In its international life the Soviet Government is content to deal with "simple" states, provided that they are fully sovereign and independent. It has even helped to promote the establishment of such states, so far without any suggestion that they adhere to the Soviet Union. Thus, recognizing the right of all peoples to self-determination, the R.S.F.S.R. signed at Moscow on September 13, 1920, a Treaty with the Khorezm People's Soviet Republic, which declared in Article 1 that the R.S.F.S.R. abandoned all claims upon Khorezm and recognized the complete autonomy and independence of that Soviet Republic.[14]

Similarly, in an Agreement between the R.S.F.S.R. and the

[13] Marx, *Critique of the Gotha Program*, p. 71.
[14] *Sborn. Deistv. Dogov.*, I, 1924, p. 184.

Bukhara Soviet Republic, signed at Moscow on March 4, 1921, the former recognizes "without reservation, the self-government and complete independence of the Soviet Republic of Bukhara with all the consequences resulting therefrom, and renounces forever the rights established by the Russian Tsarist Régime in Bukhara." [15] Moreover, the R.S.F.S.R. took a particular interest in 1919 in trying to secure for Afghanistan the status of an independent sovereign state,[16] and the treaty signed between the R.S.F.S.R. and Afghanistan at Moscow, February 28, 1921, recognized the complete independence of the latter.[17]

Since the formation of the State is a sociological and historical phenomenon, it follows that the way in which states come into being is immaterial so far as international law is concerned, for it deals only with states already in existence. The reception of a new state by the international community, however, may assume great importance. Communist scholars share in the realization that the complete participation of a new state in international intercourse is possible only upon its recognition by other states, which is usually considered in itself an act of state in international law. The fact that the Soviet Government recognized Finland,[18] Estonia,[19] Lithuania,[20] and Latvia,[21] before the R.S.F.S.R. had itself been recognized by many states of the Family of Nations is evidence that the Soviets likewise accept the theory that a state may exist as a political unit irrespective of its own recognition.[22] The various ways in which recognition has been extended by the Soviets to other states suggests that no specific form is regarded as established by the Soviet Government. Peace treaties, special declarations, and diplomatic notes [23] have served to evidence such recognition.

Recognition of the State

[15] *Sborn. Deistv. Dogov.*, II, 1922, p. 7.
[16] Popov, *Natsional'naia Politika Sovetskoi Vlasti*, p. 57.
[17] *Sborn Deistv. Dogov.*, II, 1922, p. 15.
[18] Jan. 4, 1918 (*Sobr Uzak i Rasp R.S.F.S.R*, 1918, I, p. 166).
[19] Treaty of Peace with Estonia, Feb. 2, 1920, Art 2 (*Sborn. Deistv. Dogov.*, I, 1921, p. 100; XI, 30, L N T S)
[20] Treaty of Peace with Lithuania, July 12, 1920, Art. 1 (*ibid.*, I, 1922, p. 50; III, 106, L.N.T.S.).
[21] Treaty of Peace with Latvia, August 11, 1920, Art 2 (*ibid.*, I, 1924, p. 37; II, 196, L.N.T.S.).
[22] *Cf.* Rivière, *Principes de Droit des Gens*, I, p 57; *Bonfils, Manuel de Droit International Public*, pp. 113ff ; Merignac, *Traité de Droit Public International*, I, pp. 232ff.
[23] *See* par. 3 of the Communiqué of the People's Commissariat for Foreign Af-

In contrast to the variety of methods for according recognition to states, the dual nature of the recognition of governments—*de facto* and *de jure*—should be emphasized. Whereas the international position of a state whose government has received only *de facto* recognition is not well defined, the experience of the Soviets bears out the contention that *de facto* recognition in time of peace offers many of the advantages of the more formal recognition. As evidence of this may be adduced the trade agreement between Great Britain and the R.S.F.S.R., signed at London, March 16, 1921, which, though it preceded *de jure* recognition by several years, even attempted to meet the want of regular diplomatic agents by providing that

"Each party may nominate such number of its nationals as may be agreed from time to time as being reasonably necessary to enable proper effect to be given to this agreement . . ." [24]

The classical distinction has been clearly accepted by the Soviets in their own practice, however. Thus Article 4, paragraph 2, of the Danish-Soviet Agreement, signed at Moscow, April 23, 1923, makes an express stipulation that Denmark shall not be entitled to

"claim the special rights and privileges accorded by Russia to a country which has recognized or may recognize Russia *de jure*, unless Denmark is willing to accord to Russia compensation corresponding to that of the country in question [*sic*]." [25]

Thus, for the Soviet Government, recognition *de jure* is the only logical one, in principle, if not in actual practice. It is true that for the Soviets the implied right to exchange diplomatic agents or to participate in international conferences is not of prime importance. Much more significant for them is the right of a state which has been recognized *de jure* to adhere later to international conventions at its own pleasure, or the right to be represented

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fairs to the People of Tuva, in which the Republic of Tuva was recognized as a sovereign independent republic (*Godovoi Otchet NKID k IX S'ezdu Sovetov*, 1921, p. 147).

[24] Art. 4 (*Sborn. Deistv. Dogov.*, II, 1921, p. 18; IV, 128, L.N.T.S.).

[25] *Sborn. Deistv. Dogov.*, I, 1924, p 63; XVIII, 16, L.N.T.S. This is the official wording of the text of the Agreement which was drawn only in English. Although there is no explanation as to what is to be understood under the term "compensation," the tenor of the whole Agreement suggests that it includes *de jure* recognition.

in legal proceedings before foreign courts of law by its own communist officials, or the right of claiming the validity of the decision of its national courts in the recognizing state.

Dynamics of the State

It is generally admitted by non-communist authorities that the international personality of a state is not affected by changes in its social order or in its form of government. It is on this basis that the principle of continuity and responsibility in state succession rests. For the Soviet authorities, this theory holds good only when the social or political revolution results in no change in the class structure of the state, be it from bourgeois to proletarian, or *vice versa*.[26] Hence they claim that it can have no application to the Union of Soviet States.[27] It is on this principle that the Soviet Government attempts to justify its refusal to compensate foreign investors for the losses suffered as a result of the Decree of January 28, 1918, by which all foreign loans were repudiated.

Political Changes

Thus the social and political changes which may take place within a state have a different significance for non-communists and communists. The relation between the traditional and the communist attitude towards the effect of territorial changes is less clear. There is no evidence whether or not the Soviets consider that an entity joining another state should become obligated by the treaties of the latter. Their attitude towards the duty of the receiving state anent the obligations of the entering unit seems to be contrary both to the current practice of nations and to their own interests. It is customary to agree that the entering unit remains charged with its own debts incurred previous to the act of anexation or federation,[28] and that they are not assumed by

Territorial Changes

[26] A concrete illustration of the application of this principle in practice is found also in the Declaration to "All Laboring Mohammedans of Russia and of the Orient" of November 24, 1917 (*Sobr. Uzak i Rasp. R.S.F.S.R.*, 1917–18, I, p. 96), and in the treaties between the R.S.F.S.R. and Turkey of March 16, 1921, and December 17, 1925 (*Sborn. Deistv. Dogov.*, I, 1924, p. 155, and III, 1927, p. 910); the R.S.F.S.R. and Persia of February 26, 1921 (*ibid.*, I, 1924, p. 148; IX, 384, L.N.T.S.); and the R.S.F.S.R. and Mongolia of November 5, 1921 (*ibid.*, I, 1924, p. 114).

[27] See the Franco-British Declaration of March 28, 1918; also the 3rd paragraph of the conditions set forth at Cannes on January 6, 1922.

[28] The "Joint Resolution of March 1, 1845, for annexing Texas to the United States," as superseded by an Act of Congress of September 9, 1850, provided that the obligations of Texas were not transferred to the Union (*5 U. S. Stat. at Large*, p. 797, and *9 U. S. Stat. at Large*, p. 446). When the Swiss Cantons were united into a confederation in 1848 and the German states into the North German Confederation in 1871 it was agreed that they were to remain responsible for their own outstanding debts.

the host. Yet the U.S.S.R. has evidenced its readiness to be responsible for the engagements of the separate republics from whose confederation it originated. In the conflict with Poland in 1923 it declared its readiness "to confirm the validity of the Treaty of Riga,[29] assuming all the obligations resulting therefrom in the future as the legal successor of the R.S.F.S.R., Ukrainian S.S.R., and White-Russian S.S.R."

State Succession in Foreign Practice of Soviets

When a new state emerges as the result of dismemberment of an older one, in principle it might be expected that the new state should undertake to participate in the financial obligations of the state from which it sprang.[30] The communist position on this issue is not quite clear, although the international practice of the R.S.F.S.R. and of the U.S.S.R. seems to indicate that the Soviet Government does not follow this principle. Article 3 of the Treaty of Brest-Litovsk of March 3, 1918, provided that:

"No obligations whatever toward Russia shall devolve upon the territories referred to, arising from the fact that they formerly belonged to Russia." [31]

Similar provisions are found in Article 7 of the Supplementary Treaty with Germany signed at Berlin on August 27, 1918, in which the Soviets gave up sovereignty over Estonia and Latvia.[32] All the treaties which the Soviets concluded in 1920 with Fin-

[29] Korovin, *as cited*, p. 34.

[30] In 1866 when Venetia was annexed to Italy, the obligations of Venetia were transferred to Italy. (*Cf.* the complete annexation of Alsace-Lorraine in 1871, when Germany refused to undertake any obligations incurred under the French Government). By the Treaty of Berlin of 1878, Bulgaria, Serbia, and Montenegro were to pay part of the Ottoman obligations. Article 254 of the Treaty of Versailles provided that "The Powers to which German territory is ceded shall, subject to the qualifications made in Article 255, undertake to pay

"(1) A portion of the debt of the German Empire as it stood on Aug. 1, 1914, calculated on the basis of the ratio . . . of such revenues . . . as in the judgment of the Reparation Commission are best calculated to represent the relative ability of the respective territories to make payment" . . Article 255 reads: "(1) As an exception to the above provision, and inasmuch as in 1871 Germany refused to undertake any portion of the burden of the French debt, France shall be, in respect of Alsace-Lorraine, exempt from any payment under Article 254." By clause 2 of the same Article, Poland was also excluded from the apportionment to be made under Article 254.

Exhaustive studies on the subject are found in the works of Sack, *Les Effets des Transformations des États sur leurs Dettes Publiques et autres Obligations Financières*, Paris, 1927, and Feilchenfeld, *Public Debts and State Succession*, New York, 1931.

[31] *Text of the Russian "Peace"* (Confidential. For official use only. Washington, Government Printing Office, 1918), p. 15.

[32] *Sborn. Deistv Dogov.*, I, 1921, p. 160.

land, Estonia, and Poland contain a provision that none of these successor states should be held responsible for the debts of Imperial Russia. In the Treaty of Dorpat of October 14, 1920, with Finland, Article 25 reads:

"Neither of the Contracting Powers is responsible for public debts and other engagements of the other Power." [83]

In the Peace Treaty of Dorpat of February 2, 1920, with Estonia, Article 12 provides that Russia is to pay Estonia fifteen million gold rubles and that Estonia likewise will not be held responsible for the debts of Imperial Russia. The preliminary Peace Treaty of Riga of October 12, 1920, between the R.S.F.S.R. and the Ukrainian S.S.R. and Poland provided in Article 9 that

"Poland shall not incur any obligations or charges of any kind arising from the fact that a part of the Polish territory previously belonged to the former Russian Empire." [84]

This principle was later incorporated in Articles 4 and 19 of the Peace Treaty of Riga between Poland and the R.S.F.S.R. and the Ukraine of March 18, 1921. To quote these articles:

"Poland shall not, in view of the fact that a part of the territories of the Polish Republic formerly belonged to the Russian Empire be held to have incurred any debt or obligation towards Russia, except as provided in the present Treaty. Similarly, no debt or obligation shall be regarded as incurred by Poland toward White Ruthenia or the Ukraine and *vice versa* except as provided in the present Treaty, owing to the fact that these countries formerly belonged to the Russian Empire."

and

"Russia and the Ukraine hereby discharge Poland from all responsibility in respect of debts and obligations of whatever nature incurred by the former Russian Empire, in particular in respect of obligations arising out of the issue of paper money, treasury bonds, debentures, series and certificates of the Russian Treasury, in respect of the foreign or domestic debts of the former Russian Empire, of guarantees granted to institutions and undertakings of whatever nature as well as of guaranteed debts of such institutions and undertakings, with the exception of guarantees granted to institutions and undertakings on Polish territory." [85]

[83] *Sborn. Deistv. Dogov*, I, 1924, p 170; III, 6, L N T S.
[84] *Ibid.*, I, 1921, p. 67; III, 106, L N.T S
[85] *Ibid.*, I, 1924, pp 125 and 137 respectively; VI, 52, L N T.S.

This might seem to be conclusive evidence that the Soviets felt that debts of the old régime did not attach to the new state. But Article 16 of the Peace Treaty of Riga of August 11, 1920, with Latvia, provides that it is exempt from all responsibility with regard to the debts of Russia *in view of the damages which Latvia suffered during the World War*,[86] and a similar provision is found in Article 12 of the Peace Treaty of Moscow of July 12, 1920, with Lithuania.[87] The fact that Latvia and Lithuania were relieved from any obligations arising because of having previously belonged to the former Russian Empire only in consideration of the devastation suffered by these countries during the World War, suggests that under different circumstances the Communist Régime would agree that new states should undertake to participate in the financial obligations of the state from which they separated.[88]

Termination of States

The existence of a state may be terminated by complete absorption into the domain of another state, or by dissolution into independent states. The last partition of Poland in 1795, the annexation of the Congo Free State by Belgium in 1908, or of Chosen by Japan in 1910 are typical examples of the first process. The practice of the R.S.F.S.R. and of the U.S.S.R. does not afford any concrete instances enlightening as to the communist attitude toward this method of terminating the existence of a state, but Soviet opposition to forcible annexation [89] indicates that it is not accepted as proper or justifiable.

The partial dismemberment of a state is perfectly illustrated by the fate of the former Russian Empire when what was a single state became divided into several independent states. This sort of termination of the life of a state seems to be completely in harmony with Soviet theories. Indeed it is but a step further than the doctrine of self-determination, which leads to the partial dismemberment of states. The resulting units may subsequently combine in a new entity organized upon economic rather than political lines, and the approach to the ultimate World

[86] *Sborn. Deistv. Dogov.*, I, 1921, p. 84.
[87] *Ibid.*, I, 1924, p. 104; II, 196, L.N.T.S.
[88] On the application of the principle of state succession among the Soviet Republics, see Chapter IX, on "Treaties," *infra*, pp. 282ff.
[89] See the proceedings at Brest-Litovsk, in Levidov, *K Istorii Soiuznoi Interventsii v Rossii*, Leningrad, 1925.

Commonwealth will be furthered to that extent. This is in fact what happened in the case of Russia: certain fragments of the former Empire reunited to form the Union of Socialist Soviet Republics.

CHAPTER III

SOVEREIGNTY

Theories of Sovereignty

SOVEREIGNTY is an essential characteristic of the political state, not only for non-communists but for communists as well, but while the recent development of international law has shown a tendency to lessen the emphasis on sovereignty by stressing the interdependence of modern states, communist philosophy has increased it. This is a logical development, in line with the concrete interests of the Soviet Régime, aiming to establish a network of free sovereign nationalities, which nuclei are later to consolidate in the class-less and state-less commonwealth.

There are two major schools of thought regarding sovereignty. One bases its definition upon the concept of *illimitability:* the unlimited right to govern; the unlimited capacity to rule; the unlimited concentration of granted rights; unlimited authority within the domain of the state.[1] The other finds its explanation in the theory of *spontaneous self-existence:* sovereignty is a juridical expression of the individuality of a state; the capacity for "legal" self-determination; the conception of the state as an independent spontaneous juridical person. This latter theory appears to be the more acceptable to the Soviet Régime, for due to its flexibility it is much more adjustable to the requirements of the actual policies of the Soviet Union. It is upon this basis of spontaneity, coupled with the belief in the righteousness of the cause pursued by communism, that a unique conception of sovereignty may be envisaged: from the point of view of domestic political theory, sovereignty for communists is the spontaneous right of the proletariat to struggle for its supremacy; from the international point of view it resolves itself into a paramount right of self-determination for nationalities. Since, however, the proletarian right to struggle and national self-determination, both

Soviet Conception

[1] *Cf.*, however, Duguit, who based his whole political theory upon the negation of illimitability.

essential for the progress of the world revolution, are doomed to disappearance upon the achievement of the new world order, state sovereignty for the Soviets must be viewed as a *paramount proletarian right for international social reconstruction manifested temporarily in national self-determination and class struggle.*

Self-determination

The better to understand this conception of sovereignty, a brief analysis must be made of the communist conception of nationality, and of the expression of the principle of self-determination in the legislation of the Soviet Union, and its reflection in international practice. It is upon Lenin's interpretation of the problem of nationality that the communist conception of sovereignty rests. He emphasizes the principle of self-determination, and on this basis divides all countries into three classes. To the first belong all those advanced states of Western Europe and of the American continent where the national movement has already become *l'histoire passée.* The second group includes the countries of Eastern Europe where the problem of nationality is still alive and represents one of the vital issues of the day; finally, the third class is represented by colonies and dependencies, where the question of nationality is a problem of the future.[2] He shows, further, the three stages through which the self-determining entities must pass in the process of acquiring sovereign existence. Typical of the first stage is the mobilization of national sentiment and the interjection of the peasantry into the struggle for political liberties in general and for national rights in particular. The second stage is characterized by the antagonism cultivated by the internationally concentrated labor movement working against international capital. Finally, the advent of the third stage will be indicated by the victory of the proletariat in one of the great nations. In this third period a reëvaluation of the international position of every nation will take place. The results will differ according to whether the nation is on the road from the feudal system to contemporary bourgeois democracy, or from the latter to the Soviet or proletarian democracy.[3]

Lenin's Theory

[2] Lenin, *Sobr. Soch*, XIII, 349.
[3] *Ibid.*, XIX, pp. 94ff.

The problem of nationalism in the first stage plays a particularly important rôle in the countries which in the past have never existed as independent states, such as the limathroph Baltic states, which came into existence after the Russian Revolution. The struggle of nationalities in this first stage makes a strong appeal to communists. Lenin says that the progressive awakening of the masses and their stuggle for national sovereignty call for the defense and support of every Marxist, as the first step towards the establishment of a world-wide Soviet State.[4]

The second stage of the progress of self-determination is presented by a capitalist society, based on exploitation, profit and constant struggle, in which superficial peace is possible only under a republican form of government which is truly and systematically democratic, and in so far as the State

"is willing to guarantee complete equality to all nationalities and languages, by introducing into the Constitution a provision which declares invalid any privileges of any nationality over another as well as any possible violation of the rights which belong to national minorities." [5]

Soviet Attitude

The third stage in the development of self-determination was inaugurated by the Russian Revolution of 1917.

Upon the victory of the proletariat, the Communist party immediately commenced to put into practice its theories concerning nationalities. Its demand for the immediate cessation of hostilities and a peace without annexations or oppression of peoples was an open and official manifestation of its philosophy concerning the right of self-determination for every nation. The XII Congress of the All-Russian Communist Party declared that the actual inequality of nationalities could be brought to an end only by effective and extensive assistance offered by the Russian proletariat to other backward peoples of the Union in the matter of their cultural and economic life.[6] The establishment of a special "People's Commissariat for Nationalities," [7] may be con-

Domestic Aspects

[4] Lenin, *Sobr. Soch.*, XIX, p. 137.
[5] *Ibid*, XIX, p. 34.
[6] XII *S'ezd Vserossiskoi Kommunisticheskoi Partii, Stenograficheskii Otchet*, 1925.
[7] Later, upon the formation of the U.S.S.R., it became the lower chamber

sidered as a practical application of this theory. Furthermore, a resolution was adopted by the Russian Social Democratic Labor Party in April, 1917, on the question of nationalities.[8] It expressed the theory that, since the abolition of national oppression could only be effected when a complete equality of all nations and languages was secured,

"All nations in Russia must have the right of free separation therefrom and the rights of free and independent states. The denial of such rights and the failure to take proper measures to guarantee their exercise are equivalent to support of the policy of conquest and annexation. Only the recognition of the right of nations to secede will secure a complete solidarity of the workers of different nations and further an actual democratic union of the nations."

This same resolution also demanded that in the constitution there should be included a provision "abolishing all privileges of one nation [9] over another, and all restrictions of the rights belonging to national minorities." [10]

On November 2, 1917, Lenin, then President of the Council of Peoples' Commissaries of the R.S.F.S.R., and Stalin, the People's Commissary for Nationalities, signed the "Declaration of Rights of the Peoples of Russia," which recognized the equality and sovereignty of the Peoples of Russia, including the right of complete separation, and the establishment of free independent states.[11]

Having accepted the principle that the Soviet State must be a free union of free nations, the Constitution of the R.S.F.S.R. of July 10, 1918, granted to the workers and peasants of each nationality the right

". . . to make an independent decision, at their own Plenipotentiary Congress of Soviets, whether they desired to participate in the federal

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of the Central Executive Committee of the U.S.S.R. (Decree of the Third Congress of Soviets of the U.S.S.R., May 20, 1925, in *Sobr. Zak. i Rasp.* S.S.S.R., 1925, I, p. 245.)

[8] *Vsesoiuznaia Kommunisticheskaia Partiia v Rezoliutsiiakh ee S'ezdov i Konferentsii (1898–1926)*, p. 183.

[9] Here "nation" must be understood in the political sense of the term, *i.e.* synonymous with "state."

[10] *Vsesoiuznaia Kommunisticheskaia Partiia v Rezoliutsiiakh ee S'ezdov i Konferentsii (1898–1926)*, p. 183.

[11] *Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1917–18, p. 21.

government and in other federal Soviet institutions, and if so upon what basis." [12]

The Brest-Litovsk Treaty was denounced by the Soviets on November 13, 1918, by a Decree which in part read:

"Working masses of Russia, Livland, Estonia, Poland, Lithuania, the Ukraine, Finland, Crimea, and Caucasus, freed by the German revolution from the rapacious treaty dictated by German militarism, are now called upon to determine their own destinies." [13]

Political records of the Soviets of that time prove, however, that the communist ideals formulated in the resolutions of April, 1917, and indorsed by Soviet authorities in the Declaration of November 2, 1917, in the Constitution of the R.S.F.S.R. of 1918, and in the Decree of November 13, 1918, denouncing the Brest-Litovsk Treaty, were applied in practice neither at once nor uniformly. On December 11, 1917, Lithuania proclaimed its independence; on February 23, 1918, the Transcaucasian Diet proclaimed secession from the R.S.F.S.R.; on February 24, 1918, Georgia declared itself an independent democratic republic; on May 26, 1918, Estonia did the same; and on November 18, 1918, Latvia followed suit.[14] However, it was not until December of 1918 that the R.S.F.S.R. in response to these declarations, recognized the independence of Lithuania, Estonia, and Latvia,[15] while the independence of Georgia remained unrecognized for almost two years. To quote the Decree of the People's Commissary for Foreign Affairs of December 24, 1918:

"In view of the fact that Georgia at present is not recognized as an independent state by the Soviet Government of the R.S.F.S.R. . . . persons of Georgian nationality are considered as citizens of the R.S.F.S.R." [16]

The so-called "Union of the Hill Tribes of the Caucasus," resulting from the Transcaucasian Proclamation of February 23,

[12] Chap. IV, Par. 8, Sec. 2. (*Sobr. Uzak. i Rasp. R.S.F.S.R*, 1917–1918, p. 600).
[13] *Ibid*, 1917–1918, p. 1207.
[14] Kliuchnikov i Sabanin, *Meshdunarodnaia Politika Novelshogo Vremeni*, II, pp. 96, 117, 435 and 201, respectively for Lithuania, Estonia, Georgia and Latvia. For Transcaucasia: *Isvestila*, March 28, April 13, May 16 and 18, 1918.
[15] *Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1917–1918, pp. 1268 and 1267 for Lithuania and Latvia; for Estonia—Kliuchikov i Sabanin, *as cited*, p. 208.
[16] *Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1917–1918, p. 1272.

1918, was also specifically repudiated by Soviet authorities.[17] This inconsistency is explained by the fact the while Lithuania, Estonia, and Latvia, at the time of their recognition by the Soviets, were states where the Communist Régime was expected to become permanently established, Georgia and Transcaucasia, besides having declared themselves democratic entities, were protected from the encroachment of the Soviets by the anti-Bolshevist forces in southeastern Russia. Of significance in this respect is also the Decree of the People's Commissariat for Foreign Affairs of the R.S.F.S.R. of December 24, 1918, by which Ukrainians were to be considered as citizens of the R.S.F.S.R. because "by virtue of the nullification of the Brest-Litovsk Treaty, the Ukraine is no longer recognized [as an independent state] by the Soviet Government of the Russian Republic . . ." [18]

Whatever the practical effects of the communist theory of self-determination, the principle was again incorporated in the national legislation of the U.S.S.R. The Treaty of December 30, 1922, by which the present Union of Soviet States came into existence, embodies provisions to the effect that this Union shall be a free union of free peoples with equal rights; that each republic shall have the right to leave the Union if it so desires; and that at the same time the door shall be left open for the voluntary entry into the Union of other socialist republics that may be formed in the future.[19]

International Aspects

So much for the domestic aspects of the communist interpretation of sovereignty as the spontaneous and paramount right of national self-determination. As to its reflection in international practice, reference may be made to the Treaties of Peace between the R.S.F.S.R. and Estonia, Latvia, and Lithuania, bringing to an end the wars waged by these states in defense of their international independence, and compelling the Soviets to acknowledge their right to self-determination, irrespective of the original expectations of the communist authorities. To quote as an example Article 2 of the Treaty of Peace between the R.S.F.S.R. and Estonia of February 2, 1920:

[17] *Izvestiia*, March 28, April 13, May 16 and 18, 1918.
[18] *Ibid.*, December 24, 1918.
[19] *Ibid.*, December 31, 1922; also, *Sborn. Deistv. Dogov.*, I, 1924, p. 7.

"On the basis of the rights of all peoples freely to decide their own destinies . . . Russia unreservedly recognizes the independence and autonomy of the State of Estonia, and renounces voluntarily and forever all rights of sovereignty formerly held by Russia over the Estonian people and territory by virtue of the former legal situation, and by virtue of international treaties, which, in respect of such rights, shall henceforth lose their force." [20]

A further reflection of the Soviet interpretation of sovereignty in international practice is found in the discussion between Külman and Trotzky on January 11, 1918, at Brest-Litovsk. Declaring that the Bolshevist régime "depended not upon the [territorial] possessions of Russia, but upon the right of separate peoples to their free existence," [21] Trotzky insisted that the principle of self-determination be recognized by the German Delegation.

Similarly, Chicherin, delivering his address at the Genoa Conference on April 10, 1922, said that "universal peace could only be achieved by a universal congress meeting on the basis of the equality of all peoples and the recognition of the right of every people to self-determination." [22] This theory was applied with particular clearness in the relations of the R.S.F.S.R. with the states of the Near East. In the treaty between the R.S.F.S.R. and Turkey signed in Moscow on March 16, 1921, it was provided that no treaties which might be imposed upon them should be recognized as valid by the Contracting Parties. Realizing the connection which existed between the national movements of the peoples in the Near East and the struggle which was being waged by the proletarian masses in the R.S.F.S.R., the Contracting Parties solemnly recognized the right of the peoples in the Near East to be free and independent. The problem of the Straits and the Black Sea was to be submitted to a conference of bordering states, but upon condition that the complete sovereignty of Turkey should not be endangered.[23]

[20] *Sborn. Deistv. Dogov*, I, 124, p. 195; XI, 30, L.N.T.S. A similar provision is found in Article 2 of the Treaty of Peace between the R.S.F.S.R. and Latvia of August 11, 1920, and in Article 1 of a similar treaty between the R.S.F.S.R. and Lithuania of July 12, 1920 (*ibid.*, I, 1924, p. 76; II, 196, L.N.T.S., and *ibid.*, I, 1924, p. 97; III, 106, L.N.T.S.).

[21] *Stenogramma Peregovorov*. Izd. NKID, 1920.

[22] Mills, *The Genoa Conference*, p. 64.

[23] *Sborn. Deistv. Dogov*, I, 1924, pp. 155ff.

A similar idea underlies the Treaty between the R.S.F.S.R. and Persia, signed at Moscow, February 26, 1921. All former treaties between Persia and the Russian Empire in derogation of the dignity of the Persian people were abrogated. The Soviet Government promised not to enter into any agreement that would violate or restrict the sovereignty of the Persian people.[24]

Minorities

The part played by national minorities in the international arena parallels that of the proletariat in the domestic field. Lenin believed that just as the achievement of the abolition of classes was possible only by passing through a period of the dictatorship of the once oppressed classes, so also the inevitable abolition of nationalities, to be effected through the fusion of nations, could be attained only by passing through a transition period characterized by the complete liberation of oppressed nationalities within the state.[25]

The international practice of the R.S.F.S.R. and the U.S.S.R. is in conformity with this theoretic conviction. Article 7 of the Treaty of Peace between the R.S.F.S.R. and Poland, signed at Riga on March 18, 1921, may serve as an illustration:

"In conformity with the principle of the equality of nationalities, Poland grants to persons of Russian, Ukrainian, and White-Ruthenian nationality residing in Poland all rights, guaranteeing for them free cultural development, the use of their language and the exercise of their religion. Mutually, Russia and the Ukraine guarantee to persons of Polish nationality residing in Russia, the Ukraine, and White Russia the same rights." [26]

Colonies

As a natural consequence of their attitude towards self-determination in general, communists champion the cause of colonies against their imperialistic overlords. Lenin defines colonies as "dependencies with a population having no legal rights" and as

[24] *Sborn. Deistv Dogov.*, I, 1924, pp. 148ff ; IX, 384, L.N.T.S.

[25] Lenin, *Sobr Soch*, XIX, 158 Marx had put it somewhat differently saying that "only the Proletariat can abolish nationality" (*Literaturnoe Nasledstvo*, II, p. 458).

[26] *Sborn Deistv. Dogov*, I, 1924, p. 121; VI, 52, L.N.T.S. This quotation is an exact translation of the Russian, Ukrainian and Polish texts found on p. 65, v VI, of the League of Nation Treaty Series. Article 7 in the "Official" translation of the same, deposited with the League, printed on p. 135 of the same volume, omits the expression "all rights".

"Russia and the Ukraine undertake that persons of Polish nationality in Russia, the Ukraine and White Ruthenia, shall in conformity with the principles of the equality of peoples, enjoy full guarantees of free intellectual development . . ." etc.

"countries over which the mandates have been given to financial bandits [*read* capitalists]." [27] Hence the Soviets consider it their duty to pierce the veil of bourgeois pretenses about the equality of nations, and to bring about an intimate union between the Soviet State and such suppressed peoples, by supporting their nationalist movements.[28]

Problems connected with Sovereignty

The introduction of the novel doctrine of the spontaneous and paramount right of every nationality to become, through uncompromising struggle, an element of a future class-less community has transformed sovereignty into a very flexible phenomenon, convenient both for the abstract metaphysics and for the concrete political necessities of the Soviets. For whereas logically the fact that communist philosophy admits no restrictions upon the right of self-determination leads to the conclusion that the Soviet Government favors a theory of unlimited sovereignty, by its care not to espouse the doctrine of the illimitability of sovereignty it has left the door open to actual limitation in practice. This inconsistency may be traced in both the domestic and the foreign policy of the Soviets. It is apparent in the language of the Soviet constitutions. Article I of that of the R.S.F.S.R. provides that the autonomous republics composing the R.S.F.S.R. are united on the principle of a free union of sovereign nations,[29] yet they have never actually been considered by the central Soviet authorities as sovereign entities. Their several constitutions are even subject to final ratification by the All-Russian Congress of Soviets.[30]

Domestic Policy

The inconsistency is still more apparent in the Constitution of the U.S.S.R. When on December 20, 1922, four Soviet republics [31] sent their delegates to Moscow to conclude a treaty by which they should combine into one confederated state—"The Union of Socialist Soviet Republics"—theoretically they were all

[27] Lenin, *Sobr. Soch.*, XVII, p. 260.
[28] *Ibid*, pp. 210ff.
[29] Article 1 of the Constitution of the R.S.F.S.R. (*Sobr. Uzak. i Rasp. R S F S.R.*, 1918, p. 582).
[30] *Sobr. Kodeksov R S F S.R* 4-e izd, p. 11.
[31] The Russian Socialist Federated Soviet Republic; the Ukrainian Socialist Soviet Republic; the White-Russian Socialist Soviet Republic; and the Transcaucasian Socialist Federated Soviet Republic. The Turkmen S.S.R., the Uzbek S.S.R, and the Tadzik S.S.R. joined the Union later: the first two in 1925, and the last one in 1929.

political states enjoying unlimited sovereignty. The Constitution of this new Union, however, adopted by the Central Executive Committee of the U.S.S.R. at its second session on July 6, 1923,[32] introduces the idea of limitation. Article 3 reads:

"The sovereignty of the union republics *is restricted* only within the limits stated in the present constitution, and only in respect to matters transferred to the competence of the Union. Beyond these limits each union republic exercises its sovereign authority independently. The U.S.S.R. protects the sovereign rights of the union republics." [33]

In Article 1 there are many functions enumerated as falling within the exclusive competence of the central federal authority,[34] which means that the member republics are deprived of the right to exercise them. The only guaranty of their sovereignty secured to them by the Constitution is Article 4, which provides that "each union republic retains the right of free withdrawal from the Union." [35] Thus, during their stay in the Union, these "sovereign" republics are sovereign only in a limited sense.

Foreign Policy

The practical results of the ambiguous theory of sovereignty embraced by the Soviets is evident not only within the boundaries of the Union, but in their international policy as well. The intercourse of the members of the family of nations has resulted in the establishment of a body of fundamental rights deemed to be inherent in the very idea of sovereignty: the right of every state to exist and to protect its existence; to enjoy independence and equality, in the sense of freedom of development; and to have its rights respected by others.[36] It has been demonstrated that the most fundamental right of a state, namely the right to exist, is fully admitted by the Soviets, and that they champion states in their right to independence, but their attitude towards the principle of the equality of states remains to be considered.

Fundamental Rights of States

The actual international reality, from the Congress of Vienna in 1815 to the Paris Peace Conference in 1919 to the contrary notwithstanding, it is the almost unanimous opinion of learned

[32] *Sist. Sobr Deistv Zak. S.S.S.R.*, I, p. 3.
[33] *Ibid.*, I, p 6 (Italics by author).
[34] *Ibid.*, I, p 5
[35] *Ibid.*, I, p. 6.
[36] See the Declaration of the Rights and Duties of Nations adopted by the American Institute of International Law in 1916 (*A.J.I.L*, X, 1916, p. 212).

authorities and statesmen that all sovereign states are legally equal.[37] As formulated by the Universal Peace Congress at Antwerp in 1894,

"Every sovereign state, whether small or great, weak or strong should be considered as the equal of all others, with a right to the same juridical and natural respect as that which the greatest and strongest of other nations claim, both with regard to its individuality and to its privileges as a free and organized State." [38]

Such a theory is quite consistent with communist ideas of freedom of nationalities, and represents the practice of the Soviets in their dealings with the outside non-communist world. To illustrate this, the relations between the Soviets and Mongolia may be referred to. Since 1915 Mongolia had been a protectorate of the Russian Empire. In 1921, when the anti-Bolshevist forces were compelled to withdraw, Mongolia was occupied by the Red Army and on November 5th, at Moscow, the R.S.F.S.R. signed a Treaty with Mongolia implicitly recognizing its sovereignty and political equality. Article 8 reads in part:

"The judicial authority of each of the Contracting Parties shall extend in civil as well as in criminal cases within their [respective] territories to the nationals of the other Contracting Party, and at the same time the [Contracting] Parties, animated by high principles of civilization and humanity, renounce the application by judicial, investigatory or any other organs of any punitive measures causing physical suffering or lowering the moral faculties of man." [39]

Of significance is the suggestion that this provision was inserted because the Soviet Government could not possibly "agree to the application to Russian citizens of the mediæval methods of Sino-Mongolian justice, with all its barbaric attributes," and at the same time could not "allow itself to limit the sovereignty of Mongolia by securing to Russian citizens any privileges whatsoever." [40]

The political equality of the Baltic States is likewise acknowledged in the treaties of peace which the R.S.F.S.R. concluded

[37] Korovin, *Meshdunarodnoe Pravo Perekhodnogo Vremeni*, p 46.
[38] *Rév. gen. de dr. inter. pub*, 1894, I, 458. *Cf.* the Declaration of the Rights of Nations adopted by the American Institute of International Law on January 6, 1916 (*A.J.I.L.*, X, 1916, p 124).
[39] *Sborn. Deistv. Dogov*, I, 1924, p. 114.
[40] Korovin, *as cited*, p. 47.

severally with Estonia, Latvia and Lithuania.[41] Attention must be called, however, to one fact in this connection. All these instances involve the relationship of the Soviets with non-communist states. Unfortunately for the present study, no attempt has so far been made on the part of any of the component republics to secede from the Soviet Union, nor has any independent communist state arisen. Consequently, there are no data available as to the attitude of the Soviet Union towards a claim for equality by a communist state which preferred a political existence completely independent of Moscow. In actual international practice, however, the Soviet Union has adhered to the principle of the equality of states.

Limitations upon Sovereignty

In a broad sense the fundamental rights of sovereign states are limited by the very fact of the existence of the respective states, but besides this, there are other actual limitations upon sovereignty of a purely juridical nature. In the classical international law, the most important are the principles of intervention, extraterritoriality, and permanent neutrality.

Intervention

The communists' attitude towards intervention is very closely connected with their theory of sovereignty. The aim of the Soviet Government, as set forth by the Third International, being to foment world revolution and thereby establish a class-less commonwealth, when a foreign non-communist state is viewed as a struggle of classes, intervention on the part of the Soviets is a commendable and justifiable act by which the sovereign laboring class fulfills its duty of extending its own class achievements to those who are still deprived of the enjoyment of these privileges.

By the same token, no government based upon communist philosophy could brook intervention in Russian affairs by capitalistic states. Thus the reaction of the Soviet Government to the Intervention of the "Allies" from 1917–22 was one of strong protest. There were four stages to this intervention. The first period covered the months from the *coup d'état* of October, 1917, to the Spring of 1918; during this time the Allied Powers continued to consider the R.S.F.S.R. as at war

[41] *Sborn. Deistv Dogov*, I, 1924, pp. 195–205, 75–76, and 97–106 respectively; XI, 30, L.N.T.S., and III, 106, L.N.T.S., respectively.

with Germany, and had not yet commenced their actual interference by armed force in Russian affairs. The message of President Wilson, sent on March 11, 1918, to the Fourth Congress of Soviets at Moscow is pertinent. It reads in part:

"May I not take advantage of the meeting of the Congress of the Soviets to express the sincere sympathy which the people of the United States feel for the Russian people at this moment when the German Power has been thrust in to interrupt and turn back the whole struggle for freedom and substitute the wishes of Germany for the people of Russia?

"Although the Government of the United States is, unhappily, not now in a position to render the direct and effective aid it would wish to render, I beg to assure the people of Russia through the Congress that it will avail itself of every opportunity to secure for Russia once more complete sovereignty . . ." [42]

With the Spring of 1918, the intervention entered its second phase, which continued to the end of the year, and was known generally as the "little intervention of the Entente." This may be characterized as a strategic policy of the intervening powers to continue the war with Germany on Russian soil by supporting those Russian armed units which expressed their readiness to continue the fight for the cause of the Allied Powers. The next two years are known as the period of the "great intervention," involving a policy of blockade, "sanitary cordons," and "barbed wire" to suppress the growth and spread of communism. With the failure of the anti-Bolshevist forces to gain a victory over the Soviet armies in 1921, the intervention entered its fourth and last stage. Attempts were made to pave the way to peaceful intercourse on the basis of the recognition of the permanence of the Soviet authority.

The whole intervention of the Entente from 1917 to 1922 was viewed by the Soviet authorities as nothing more than a large-scale attempt of the capitalist class to oppose the development of the proletarian movement, and, as such, it evoked violent opposition on their part. Trotzky declared that "nobody demanded from the present Allied diplomats the recognition of the Soviet Government," but at the same time that Government,

[42] *Papers Relating to the Foreign Relations of the United States. 1918. Russia.* I, pp. 395–396.

which was responsible for the fate of the country, could not "allow Allied diplomatic and military agents to interfere for any purpose in the internal life of our country and attempt to force a world war." [43] Chicherin [44] in 1919 sent a wireless protest to the United States and to the Allied European Powers:

"At the moment when the Entente armies are crossing the borders and the Entente fleets nearing the shores of what was previously the Russian Empire, the Government of the Soviet Republic protests once more solemnly before the deluded soldiers of their armies and the sailors of their navies, and before their toiling brothers all over the world against this wanton aggression, against this act of sheer violence and brutal force, and against this attempt to crush the liberty, the political and social life of the people of another country." [45]

The principle of opposition to intervention was consistently manifested by the Soviet Government even in favor of other states. Various treaties and agreements signed by the R.S.F.S.R. and the U.S.S.R. embody this attitude. A clear expression of it is to be found in the Polish-R.S.F.S.R. Treaty of Peace, signed on March 18, 1921. Article 5 of this Treaty provides that each Contracting Party undertakes

". . . to respect in every way the political sovereignty of the other party, to abstain from interference in its internal affairs, and particularly, to refrain from all agitation, propaganda or interference of any kind, and not to encourage any such movement.

"Each of the contracting parties undertakes not to create or protect organizations which are formed with the object of encouraging armed conflict against the other contracting party or of undermining its territorial integrity, or of subverting by force its political or social institutions, nor yet such organizations as claim to be the government of the other party or of a part of the territories of the other party." [46]

Article 16 of the draft treaty between Great Britain and the Soviet Union of August 8, 1924, was couched in approximately the same language.[47]

Whereas, it may be argued that in all these instances the

[43] Shuman, *American Policy toward Russia since 1917*, p. 60.
[44] Then People's Commissary for Foreign Affairs.
[45] Chicherin, *Two Years of Foreign Policy*, p. 35.
[46] *Sborn Deistv. Dogov*, I, 1924, p. 121, VI, 52, L.N.T.S.
[47] The treaty has never been in force Text from Kliuchnikov i Sabanin, *Meshdunarodnaia Politika Noveishogo Vremeni v Dogovorakh, Notakh i Deklaratsiakh*, III, (I), pp. 318–319.

communist authorities were guided by practical interests in their opposition to intervention, these interests were not always the same. In the beginning they were desirous of denouncing the invasion of territory under their jurisdiction; subsequently they feared that anti-proletarian propaganda might deprive them of the prestige they had gained. These practical considerations led the Soviet Government to subscribe to the view of the majority of non-communist authorities that intervention is an undesirable violation of the sovereign rights of a state—so long as the state is looked upon objectively as the classical non-communist political person of international law. At the same time as a special method used for the propagation of communist philosophy, intervention is juridically acceptable during the transition period of state evolution. Indeed, it appears to be normal and inevitable between the communist and capitalist worlds.

Extraterritoriality

The régime of extraterritoriality in international law, as it is generally understood, means

> ". . . the custom of granting immunity from local jurisdiction to certain persons generally representing the public authority of a friendly state. This immunity may extend to those persons and things under their control." [48]

In some non-Christian countries, notably in the Near East and the Orient, this immunity has been extended to whole communities consisting of persons who, although residents in certain areas, are deemed for the purpose of civil and criminal jurisdiction to be extraterritorial and subject only to their respective national laws, administered generally by their respective consuls, or in some instances by other authorities appointed for that purpose by their governments. Such communities are established by capitulation or by treaty.

The attitude of the Soviets to this principle is twofold. In the case of persons "representing the public authority," the Soviet Government insists very vigorously upon the application of this principle in practice.[49] With no less vigor it opposes

[48] Wilson, *International Law*, 8th ed., 1922, pp. 141–142.
[49] *Cf.* Chapter VII, on "Diplomacy," *infra*, pp. 185ff.

the principle both in theory and in practice as applied to private persons. The policy of the Soviet Government towards the oppressed peoples of the Near East and Orient is utterly incompatible with a régime of capitulations, or extraterritoriality for the benefit of Soviet citizens in those lands. Indeed, this principle of extraterritoriality was renounced by the Soviets, almost without exception, in every treaty which the R.S.F.S.R. concluded with states in the Near East and Asia. The following instances may serve as illustrations: Article 7 of the Treaty entered into by the R.S.F.S.R. and Turkey on March 16, 1921, provides that

". . . the government of the R.S.F.S.R., considering the régime of extraterritoriality as *inconsistent with the free development of every country* as well as with the free exercise of its sovereign rights, regards all acts and rights relative to this régime as having lost their force and as repealed." [50]

Similarly, in Article 16 of the Treaty between the R.S.F.S.R. and Persia, signed at Moscow on February 26, 1921, it was expressly stipulated that

". . . in conformity with the statutory decree relative to the abolition of Russian consular jurisdiction, as expressed in the note of the Soviet Government of June 26, 1919, all Russian citizens in Persia, as well as all Persian citizens in Russia, from the moment of the signature of this treaty shall enjoy equal rights with the native citizens and become subject to the laws of the country of their sojourn. All their legal disputes shall be dealt with in local courts." [51]

Permanent Neutrality

The principle of perpetual neutrality is the third formal limitation upon sovereignty. Article 5 of the Treaty of Peace signed by the R.S.F.S.R. and Estonia at Tartu, February 2, 1920, is important as showing the attitude of the Soviets towards this principle. Referring to a régime of permanent neutrality for Estonia, it reads:

"Should the perpetual neutrality of Estonia be internationally recognized, Russia undertakes to respect such neutrality and to join in guaranteeing it." [52]

[50] *Sborn. Deistv. Dogov*, I, 1924, p. 157. (Italics by author.)
[51] *Ibid*, I, 1924, p. 152; IX, 384, L.N.T.S.
[52] *Ibid.*, I, 1924, p. 197; XI, 30, L.N.T.S.

According to Article 12 of the Treaty of Peace between the R.S.F.S.R. and Finland, signed at Dorpat, October 14, 1920,

"The two Contracting Powers shall in principle support the neutralization of the Gulf of Finland and of the whole Baltic Sea, and shall undertake to coöperate in the realization of this object." [53]

Article 16 of the same Treaty says that

"1. The Contracting Powers mutually undertake to maintain no military establishments or armaments designed for purposes of offense upon Lake Ladoga, its banks, the rivers, and canals running into Ladoga, or upon the Neva as far as the Ivanoffski Rapids (Ivanovskie Porogi). In the above mentioned waters it shall, however, be permissible to station warships with a maximum displacement of one hundred tons, provided with guns of a maximum caliber of fifty-seven millimeters, and, furthermore, to establish military and naval bases conforming to these restrictions.

"2. Should the Gulf of Finland and the Baltic Sea be neutralized, the Contracting Powers mutually undertake to neutralize Ladoga also." [54]

Article 14 stipulates that

"As soon as this Treaty comes into force, Finland shall take measures for the military neutralization of Hogland under an international guaranty . . . Russia undertakes to support the measures taken with a view to obtaining the above-mentioned guaranty." [55]

On December 4, 1928, at the Lausanne Conference, Chicherin, Chairman of the Soviet delegation, demanded that the Bosphorus and the Dardanelles be open in time of peace and in time of war to commercial ships of all nations without exception, and suggested that they should always be closed to the naval and aërial forces of every nation, except Turkey.[56]

Thus the possibility of the permanent neutralization of a country or area is not gainsaid by the Soviet authorities.

Maintenance of the Sovereignty of the U.S.S.R.

Little remains to complete the exposition of the Soviet approach to the issues of international law derived from the concept of sovereignty. At times the authorities have resented the settlement of certain international problems without the participation of the

[53] *Sborn. Deistv. Dogov.*, I, 1924, p. 176; III, 6, L.N.T.S.
[54] *Ibid.*, I, 1924, pp. 176–177; III, 6, L.N.T.S.
[55] *Ibid*, I, 1924, pp. 176–177; III, 6, L.N.T.S.
[56] Min. Fr. des Aff. Etr., *Docum. Dip.*, I, pp. 107–108, and 133–135.

R.S.F.S.R. or the U.S.S.R., *e.g.*, the problem of Spitzbergen, the Aaland Islands, Memel, and the Straits. In other instances they have emphasized the fact that certain problems were exclusively within the competence of the Soviet state authority, and should be settled without foreign interference, as in the Soviet-British conflict in May, 1923, or the Karelian Dispute.[57] Furthermore in order to support the communist theory of sovereignty the Soviet Government is forced to adopt a position which differs considerably from the non-communist legal conception regarding resolutions of international congresses. At the Genoa Conference in 1922, Chicherin made the statement that they could not be enforced by coercion of any kind, but only with the free consent of every individual participant.[58]

Whereas in international life today the tendency is to submit the will of individual states to the collective approval of other states, the Soviet Government has taken a firm stand in emphasizing its preference for the principle of individualism in international relations. A purely imaginary fear that every non-communist international collective body might develop into an organized enemy of the communist class-organization of the state, was the principal reason for this. Thus the attitude of the U.S.S.R. towards the League of Nations until recently was one of determined opposition. As Litvinov said, the Soviet Government considered the League of Nations

". . . not [as] a friendly assimilation of peoples working for the common benefit, but as a masked union of the so-called great powers who have arrogated to themselves the right of dictating the fate of weaker peoples." [59]

Except for coöperating in humanitarian matters,[60] the U.S.S.R. has taken no part in the work of the League.[61] This in its turn suggests the conclusion that the Soviet Government, in defending its novel theory of sovereignty as a paramount right of an

[57] For literature on this see Tanin, *10 Let Vneshnei Politiki S S S R*, and *Mezhdunarodnaia Politika S S S.R.* (1917–24). *Cf* also Radek, *Vneshniaia Politika Sovetskoi Rossii: Anglo-Sovietskie Otnoshenia. Noty i Dokumenty.* Izd. NKID (1927).

[58] Mills, *The Genoa Conference*, pp. 64ff.

[59] Ivanov, *"Liga Natsii" (Entziklopediia Prava i Gosudarstva*, II, p. 755).

[60] *Cf.* Soviet Note of Mar. 14, 1923, *Kliuchnikov i Sabanin, as cited*, p 231.

[61] *Infra*, p 291ff.

organized proletariat to world reconstruction via national self-determination, stands in open opposition to any kind of arbitration as a means of bringing about better mutual understanding among the nations, a position obviously contrary to the practice among non-communist states.

State Liabilities

So much for the Soviet attitude towards the rights of states and the limitation of sovereignty. Opposed to rights are duties and liabilities. This holds for states as well as for individuals. Whereas, broadly speaking, it is the duty of every state to respect the enjoyment by other states of the rights enumerated above, certain specific state liabilities may be incurred: liability in the case of state succession and responsibility for acts of its agents or citizens. The attitude of the Soviets towards the former is analyzed elsewhere.[62] A few words are necessary here in regard to their attitude towards the international problems arising from the latter.

Acts of Officials

As state liabilities in this sense may be classed responsibility for the acts of its officials or for delinquencies of citizens, and liability for nonfulfillment of its contracts. Unwarranted acts of its officials are the most common cause involving the international responsibility of a state. The traditional view that a state is responsible for the acts of its agents is logically not consistent with the communist conception of the state. As a class struggle aiming to benefit the proletariat, the communist state should be free in interpreting its obligations towards capitalist states. In actual practice, however, the Government of the U.S.S.R. not only holds other states to strict accountability, but admits its own responsibility in such instances. Because the French Ambassador, Noulens, promised Chaikovsky, the Head of the Anti-Bolshevist Government at Archangel in 1918 that the French Government would support the anti-Bolshevist forces in their struggle with the Red Army, the Government of the R.S.F.S.R. requested his withdrawal as ambassador.[63] A police raid made upon the offices of the Soviet Trade Commission in Berlin in May, 1923,[64] and a similar raid upon the offices of the Soviet Trading Company "Arkos" in London on May 12, 1927, resulted in strong pro-

[62] *Supra*, p. 22. *Cf.*, *infra*, pp. 282ff.
[63] *Izvestiia*, March 30, April 24, and April 28, 1918.
[64] *Mezhdunarodnaia Letopis'*, 1925, No. 1, pp. 14–23.

tests to the German and British Governments respectively.[65] When a liberal trial was accorded in Switzerland to one Konradi, who, in 1922 had killed Vorovsky, the Soviet Minister at Lausanne, the Soviet Government protested vigorously but without avail, with the result that on June 20, 1923, the Central Executive Committee and the Council of Peoples' Commissaries decreed an economic boycott against the Swiss Government. The Soviet Government charged that

". . . The Swiss Federal Council had not given the satisfaction to the Soviet Government which the latter demanded in connection with the assassination of Comrade Vorovsky, leaving the last memorandum of the Soviet Government unanswered; . . . that the Swiss Federal Council was openly giving allowances to the murderers of Comrade Vorovsky and to their associates, without taking against these persons the measures usually taken against important political criminals." [66]

On August 9, 1923, Chicherin communicated with the Bulgarian Government denouncing the oppression under which Soviet agents had been suffering in Bulgaria after the communistic activities of Stambuliski had been brought to an end by the *coup d'état* of July, 1923, engineered by Zankoff. This protest proving ineffective, diplomatic relations between the Soviet Government and the Bulgarian Government were severed.[67] All these illustrations leave no doubt that the principle of the responsibility of states for unwarranted acts of their officials is fully indorsed by the Soviet authorities, who do not fail to take advantage of it in international politics.

In the reverse situation, when it was against acts of Soviet authorities that foreign states were protesting, the government not infrequently assumed responsibility and acknowledged liability for the acts of its agents. This is well illustrated by correspondence exchanged between Great Britain and the Soviet Union in 1923 at a time when the relations between the two governments were extremely tense and critical. Great Britain

[65] For correspondence on this, see Kliuchnikov i Sabanin, *Mezhdunarodnaia Politika Noveishego Vremeni v Dogovorakh, Notakh i Deklaratsiakh*, III, (I), pp. 377ff.

[66] *Sobr Uzak i Rasp. R S F.S R.*, 1923, I, p 1039

[67] Tanin, *Mezhdunarodnaia Politika S.S S.R.* (1917-24), p. 76. *Cf* also Decree of the Central Executive Committee and of the Council of Peoples' Commissaries of Aug 16, 1929, by which diplomatic relations with China were severed (*Sobr Zak. i Rasp. S.S.S.R*, 1929, I, p. 1078).

demanded that Mrs. Stan Harding, a journalist, be compensated for her imprisonment by Soviet authorities, and Mrs. Davison for the execution of her husband. Krassin replied in a memorandum of May 23, 1923, that

"2. The Russian Government is ready to pay compensation for the execution of Mr. Davison and for the arrest of the journalist Mrs. Stan Harding: with the reservation, however, that this willingness in no way signifies that the Russian Government recognizes that there was any irregularity in the repressive measures it took against these spies. . . ." [68]

To the further demand of Great Britain that the Soviet representative Raskolnikoff and another official, Shumiatzki, who had been found engaged in anti-British activities, be transferred from Kabul "to some other areas where their duties will not bring them into contact with British interests," [69] Krassin replied in a memorandum communicated June 9, 1923, which reads in part:

"The officials whose guilt has been established by both governments, equally interested in the maintenance of friendly relations, must be recalled or subjected to some other penalty." [70]

This is a clear admission of the responsibility of the state for the acts of its officials.

Contracts

The most interesting illustration of the attitude of the Soviet Government towards its responsibility for its contracts is furnished by the commercial agreements entered into by its Trade Representatives abroad. The Soviet Government not only assumes full responsibility for the undertakings contained in these contracts but permits itself to be sued thereon in foreign local courts.[71]

Summary

The Soviet attitude toward sovereignty may be summarized as a conscious subjection of theoretical aspirations to concrete political necessities. The practical exercise of the provisional manifestation of communist sovereignty—national self-determination and class struggle—is confined by the Soviets to the admin-

[68] [Gr. Brit.] *Cmd.* 1890, 1923, Russia No 4 (1923), p. 3.
[69] Memorandum communicated by British Government to Krassin on May 29, 1923 (*ibid.*, p. 5).
[70] Memorandum communicated by Krassin to British Government in reply to its note of May 29, 1923 (*ibid.*, p. 11).
[71] *See* Arts. 6 and 9 of the Protocol with Lithuania of August 29, 1931 (*Sborn. Deistv. Dogov.*, VII, 1933, pp. 72, 73). *Cf. infra*, p.

istration from the Kremlin of national and class problems within the U.S.S.R. only. In dealing with the international aspects of the problem, the Soviets are content to see it left in each individual case to the interpretation dictated by the political wisdom and diplomatic skill of the moment.

Chapter IV

TERRITORY

For a state to exercise its sovereignty, there must be an area over which this sovereignty may be exerted. Hence a state, in the classical sense, is a body politic, which, in addition to other characteristics, connotes the idea of territory. This is one of the requirements of a state according to non-communist theories, although, as a matter of fact, no definition of the state in international law has ever included any mention of domain. It has been emphasized that the communists conceive the state to be a struggle of classes. Even with such an abstract conception of state, however, it is evident that the territorial element is of great importance, for it is the territory which serves as the arena for this struggle. Moreover, in order to possess international legal capacity, *i.e.*, to be a subject of international law, the state must have authority over a population within a certain territory. Hence, the relation of the Soviet State to its territory must be analyzed.

Imperium

The territory of a communist state is a geographical limitation of the space over which the dictatorial authority of the proletariat extends. Over its territory it exercises complete authority, as does any fully sovereign state. To quote Stuchka, a leading Soviet jurist:

> "The State is a class organization of Soviets embodying *a fixed territory* and its population, and united *under the sovereign state authority*." [1]

The expression "sovereign state authority" *per se* implies the right to command, including the right to employ the forces of the state to execute the laws, which right is an essential charac-

[1] Stuchka, *Uchenie o Gosudarstve Proletariata i Krestianstva*, p. 21. (Italics by author.)

teristic of the principle of *imperium*.[2] The classical conception of sovereignty exercised within a certain territory conveys the idea that this territory is politically subject to the sovereign jurisdiction of the state. From the point of view of this *imperium*, the territory subject to the state may be considered "property" of the state. This is suggested by certain rights which the state has over the land owned by private individuals within its jurisdiction, such as the power to levy taxes, and the power to take privately owned land for public purposes.

Dominium

Associated with the principle of *imperium* is that of *dominium*, which, in civil law, signifies ownership of property, in the widest sense, including both the right of property and the right of possession.[3] There may be certain portions of the territory subject to the jurisdiction of the state which may be owned directly by it. Over these territories the state enjoys *dominium*. Ownership based on *dominium* does not imply that the property is absolutely under the control of the state: such property may be owned by the state even within the borders of other states. Although the relation of the state to its territory differs as private-law owner and as sovereign over land within its jurisdiction owned by private citizens, as far as other states are concerned, lands over which *dominium* or *imperium* are exercised may both be included under the term "territory," or "property" of the state. It is in this inclusive sense that the term "property" as used in the Soviet legal material regarding the state and its territory is to be understood.

According to Marx, in every socialistic state the land must be nationalized, and the income from its lease used to cover state expenditures.[4] This means that there can be no private ownership of the land which constitutes the territory of the proletarian state. In conformity with this theory, the All-Russian Central Executive Committee on February 19, 1918, issued a Decree by which "all private ownership of land, subsoil, waters, forests, and animal life within the limits of the Russian Socialist Federal Soviet Republic is abolished forever,"

[2] Black, *Dictionary of Law*, 2nd ed., p. 594.
[3] *Ibid*, p. 390.
[4] Marx, *Communist Manifesto*, p. 11.

and "the land, without any (legal or secret) compensation, henceforth is transferred to be used by all toiling masses." [5] No mention was made of nationalization, however; yet Article 2 of the Land Code of 1922,[6] as well as Article 1 of the Forest Code of 1923,[7] and Article 53 of the Civil Code of the R.S.F.S.R. of 1922,[8] provide that the territory of the Soviet State is the exclusive property of the state from every point of view,[9] *i.e.*, in relation to individual Soviet citizens, as well as in relation to foreign states. This in its turn means that the proletarian state simultaneously exercises both *dominium* and *imperium* over its territory. However, while the latter is unlimited and absolute in its character, the former does not imply such complete control. Thus, whereas the Soviet State may alienate parts of its territory as an act of sovereignty, as a private-law owner, it possesses no power to dispose of any part of the territory by way of barter, sale, or the like. On the other hand, it has the right to establish rules and regulations governing the possession and usufruct of the land. While in many states the rights of private owners limit the right of

[5] *Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1917–1918, p. 327.
[6] *Sobr. Kodeksov R.S.F.S.R*, 4-e izd, p. 313.
[7] *Ibid*, p. 360.
[8] *Ibid*, p 421.
[9] The problem of the title to land in the U.S.S.R. is not quite clear. Does the land in the Soviet Union belong to the Union as a whole or to the individual republics? Since in the wording of Article 1 of the Decree of 1918 there is no mention of nationalization, it follows that the land in the R.S.F.S.R. had no owner after February 18, 1918. On the other hand, the above-mentioned articles of the Land, Forest, and Civil Codes of the R.S.F.S.R. are in force and express the idea of ownership very clearly. There are several theories on the subject in the U.S.S.R.: Professor Rosenblum opposes any kind of ownership over land ("K voprosu o gosudarstvennoi sobstvennosti," *Sovetskoe Pravo*, 1927, No 3, pp. 97 *et seq.*); Antonov-Saratovsky maintains that the land in the U.S.S.R. is simultaneously the property of the Union as a whole, and of each Union Republic separately ("K zakonu ob osnovnyh nachalah zemlepol'zovania i zemleustroistva S.S.S.R," *Sovetskoe Pravo*, 1927, No. 3, pp. 1–30), finally, Karadzhe-Iskrov puts forth the theory that the right of ownership in the land is vested with the individual Union Republics only (*K voprosu o prave gosudarstva na zemlu*, Irkutsk, 1928). None of these theories makes even a mention of the minor autonomous republics, which proves that they are out of consideration entirely. The importance of this problem for the present study is limited to the period before the formation of the Union. After 1923, it lost its significance, for it is the Union as a whole which is authorized to decide upon the international fate of the land now under the jurisdiction of the Soviets, and it is in this sense that the provision of clause "b" of Article 1 of the Union Constitution must be interpreted: "To the competence of the Union of S.S.R. belongs . . . the changing of state boundaries of the Union, as well as regulation of problems relative to the alteration of the boundaries between the Union Republics."

the state in this respect, in the Soviet Union, where the people use the land only by the grant of the government, they enjoy no rights paramount to those of the state.

In addition to the unlimited authority and exclusive control with which the Soviet Government exercises both *dominium* and *imperium* in practice, there is another characteristically communist attitude in regard to land. The conception of *dominium* has been supplemented by direct economic exploitation of its territory by the state.[10]

Constitutional Provisions in U.S.S.R.

To indicate that the relation of the state to the territory comprising the Soviet Union is based on a combination of the principles of *imperium* and *dominium* is not enough. The political structure of the Soviet Union is such as to permit the various component members to exercise these two principles concurrently with itself. Hence it remains to be determined whose "property" Soviet territory is, that of the U.S.S.R. as a whole, or that of each of its component republics separately.

After the disintegration of the Russian Empire, there arose many independent autonomous republics within the former confines of the Russian State. Almost at once, however, there developed a tendency to coalescence: one republic merged with another, or two or more combined to form a consolidated federation. Thus there emerged the Russian Socialist Federated Soviet Republic (R.S.F.S.R.), and the Transcaucasian Socialist Federated Soviet Republic (Tr.S.F.S.R.), which were ultimately to combine with the Ukrainian and White-Russian Socialist Soviet Republics to form the present Union of Socialist Soviet Republics.[11] It may be posited that the original autonomous entities possessed both *dominium* and *imperium* over their territories. When coalition took place, the former remained unchanged; the extent to which the *imperium* was lost would depend upon the terms of the consolidation. Thus Article 2 of the Constitution of the R.S.F.S.R. of July 10, 1918, provided that Russian territory belonged to the "Federation of National Soviet Republics," while Article 49 stipulated further that, as state property, the territory could be

[10] Rosenblum, "Zemel'noe Pravo," *Osnovy Sovetskogo Prava*, p. 353.
[11] See Appendix I

alienated only by the supreme federal authority.[12] A decree of the Council of People's Commissaries of the R.S.F.S.R. of January 30, 1922, concerning these issues,[13] and the supplementary Decree of March 16, 1922,[14] were to the same effect. Similarly, when the U.S.S.R. was established in 1923, extensive rights of *imperium* were granted the Union over the territory of its constituent states. Article 1 of the Constitution of the U.S.S.R. provides for the establishment by the federal authorities of general principles governing the development and use of the land, and also the use of mineral deposits, forests, and waters throughout the territory of the U.S.S.R.[15] Clause "h" refers to:

". . . the establishment of the foundations and a general plan for the whole national economy of the Union . . . the conclusion of concession agreements, both for the whole Union and on behalf of the union republics." [16]

The Soviet Union not only determines the general conditions of the use of Russian territory, but is alone empowered to effect changes in its boundaries. Clause "b" of Article 1 provides that

". . . alteration of the external frontiers of the Union, and also the regulation of questions of the alteration of the frontiers between union republics shall be kept within the competence of the Union." [17]

An apparent qualification of this right as concerns the internal frontiers is presented by Article 6 of the Constitution of the U.S.S.R., which provides that

". . . the territory of the union republics cannot be altered without their consent." [18]

This right of consent which the individual union republics enjoy might be construed as an inconsistent exercise of the principle of *imperium* on the part of these republics, but it is really only a guaranty of their freedom to withdraw from the Union. For it is obvious that the right of secession would lose all value if the Union as a whole might reduce the territory of its component

[12] *Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1917–1918, 604.
[13] *Ibid.*, 1922, I, p. 172.
[14] *Ibid*, 1922, I, p. 408.
[15] Clause "h".
[16] *Sist. Sobr. Deistv. Zak. S.S.S.R.*, I, p. 6.
[17] *Ibid.*, I, p. 5.
[18] *Ibid.*, I, p. 6.

republics at will. Their right to secede, if it is to amount to more than an empty formula, must connote assurance that their territorial extent is not subject to reduction without their consent. Article 6 must be interpreted not as a retention of *imperium*, but as a grant of the subjective right of consent or dissent to the union republics as to any contemplated change in their boundaries. In case of conflict, the minor republic has the right to insist upon its privilege of consent. So long, however, as the Union remains intact, it is the Union which prevails in issues of this nature.

In brief, while the Union Treaty [19] is in force, each individual union republic enjoys only *dominium* over its territory. If it happens that a union republic actually succeeds in withdrawing from the Union, there is nothing to prevent its becoming from that moment a state equal to the Union, and, consequently, not only enjoying *dominium*, but exercising *imperium* as well within its own territorial limits.[20] In view of the thus marked tendency to confine the supreme authority over the territory in the U.S.S.R. to the Union Government, any analysis of the communist attitude towards the problems of territory in the light of international law must be made in respect of the Soviet Union as a whole, and not of the individual union, or component, republics.

The fundamental law of territorial jurisdiction is that the absolute and exclusive authority of a state extends no farther than its own frontiers. Hence the requirement of definite state boundaries is universally recognized in the law and practice of nations. In the case of the Soviet Union, the wording of the Declaration of December 30, 1922, regarding the formation of the Union may give the impression that vagueness regarding boundaries is a peculiar characteristic of the U.S.S.R.: Boundaries

". . . entry into the Union is open to all Socialist Soviet Republics, both those now existing and those which may arise in the future." [21]

[19] *Sist Sobr. Deistv Zak. S.S.S.R.*, I, p 5.

[20] Illuminating material on the actual attitude of the Soviet authorities toward the right of the Soviet States to their territory may be found in the Stenographic Reports of the Meetings of the Fourth Session of the Fourth Congress of the Central Executive Committee of the U.S.S.R. in December, 1928. (*4 Sessila TsIK S.S.S.R. 4 Sozyva, Stenograficheskii Otchet.* [Bulleten' Nos. 12, 13, 16, 17, 18, and 33], Moskva, 1928.) *Cf* also *supra*, p 42

[21] *Sist. Sobr. Deistv Zak. S.S.S.R.*, I, p. 4.

However, the contrary may easily be proved by the fact that the Union of the Soviet Republics was originally formed by a treaty between four independent Soviet republics, each one of which had a distinct geographical extent.[22] Furthermore, paragraph 1 of the Decree of the Council of Peoples' Commissaries of the U.S.S.R. of June 15, 1927, reads:

". . . state boundaries of the U.S.S.R. may be established and changed only by decrees of the supreme organs of the U.S.S.R." [23]

In their international practice, the Soviets have given meticulous consideration to the problems of boundaries, sometimes to the extent of formulating protests against foreign states for failure to observe their significance. Thus Article 3 of the Treaty of Peace between Latvia and the R.S.F.S.R. of August 11, 1920,[24] prescribes in very exact language how the boundary between these two states shall run; the same is also the case in Article 3 of the corresponding Treaty with Estonia, signed February 2, 1920.[25] Article 2 of the Treaty of Peace with Poland of March 18, 1921, after defining the land frontiers continues:

". . . for the purpose of determining the frontier along the course of the rivers, it is agreed that the line fixed shall follow the main course in the case of navigable rivers, and the line of the middle of the largest branch in the case of rivers which are not navigable." [26]

On June 1, 1922, there was concluded between the R.S.F.S.R. and Finland an agreement by which the boundary line between these two states was declared inviolable.[27]

The U.S.S.R. has maintained the interest in boundaries man-

[22] At the present there are seven union republics: the Turkmen S.S.R. and the Uzbek S.S.R. joined the Union in 1925, while the Tadzhik S.S.R. became the seventh member in 1929.

[23] *Sobr. Zak. i. Rasp. S.S.S.R.*, 1927, II, p. 1218.

[24] *Sborn. Deistv. Dogov.*, I, 1924, p. 76; II, 196, L.N.T.S.

[25] *Ibid.*, I, 1924, p. 192; XI, 30, L.N.T.S.

[26] *Ibid.*, I. 1924, pp. 121–125; VI, 52, L.N.T.S. *Cf.* also Art. 2 of the Supplementary Protocol to the Preliminary Treaty of Oct. 12, 1920, signed at Riga on Feb. 24, 1921 (*Sborn. Deistv. Dogov.* II, 1921, p. 80); also, Arts. 2 and 3 of the Treaty with Turkey of March 16, 1921 (*ibid.*, p. 146). *Cf.* the Soviet protest of June 1, 1934, to Japan regarding the S.S. *Di-Chen*, in which it was pointed out that "according to the general principles of international law, on the boundary Amur River each of the bordering states has the right to apply its own rules in that part of the river which lies between the international boundary line and the shore of the state in question." (*Izvestiia*, June 4, 1934, No. 129.)

[27] *Sborn. Deistv. Dogov*, I, 1924, pp. 300–315; VI, 318. L.N.T.S.

ifested by the R.S.F.S.R. Already in the first year of its international life, the U.S.S.R. proved that the importance of the territorial limits of a state was not ignored in Soviet practice. It was on December 15, 1924, that Chicherin, the Soviet People's Commissary for Foreign Affairs, sent a protest to the Government of the United States of America against the erection of a magnetic observation station in the Bay of Emma on the Chukot Peninsula, and the setting up of a sign which read:

"Magnetic Observation Station of the Coast Geodetic Survey Service of the U.S.A. Penalty for removal of this sign—$250,000 or imprisonment."

The concluding lines of this protest read as follows:

"Protesting categorically to the Government of the U.S.A. against such illegal acts of its officials, *who make no distinction where the territory of their country ends and the territory of other sovereign states begins,* I must emphasize the fact that such violation of the legal rights of the U.S.S.R. will be suppressed by the Soviet Government by every available means." [28]

The Agreement between the U.S.S.R. and Persia, signed at Askabad on February 20, 1926, provided for both Contracting Parties an equal right to use the boundary rivers and waters.[29] The Agreement between the U.S.S.R. and Poland, signed at Moscow on August 3, 1925, established a régime by which all conflicts that might arise in connection with the boundaries between the contracting states might be brought to a peaceful settlement.[30] Of a similar nature was the Treaty signed at Riga on July 19, 1926, by the U.S.S.R. and Latvia, and the Treaty between the U.S.S.R. and Estonia signed at Tallinn on August 8, 1927.[31] So, too, the notes exchanged between the U.S.S.R. and Persia on August 14, 1927, by which the offices of five special commissaries were established along the boundary line between these two states, secured a régime for the pacific settlement of the conflicts that might arise in respect of those boundaries.[32]

[28] *Mezhdunarodnaia Letopis'*, 1925, No. 1, p 40 (Italics by author.)
[29] *Sborn. Deistv. Dogov*, III, 1927, pp 64–70.
[30] *Ibid*, III, 1927, pp 70–73.
[31] Ibid., IV, 1928, pp 38–41 and 49–53 respectively, LIV, 151, L.N.T.S, and LXX, 401, L.N.T.S, respectively.
[32] *Ibid.*, IV, 1928, pp. 43–46.

This international practice of the Soviet Union proves, furthermore, that such demarcations as the *thalveg*, in cases where rivers form the boundaries, are taken as the most natural dividing lines between states, the Soviet Union in this respect following very closely the generally adopted international practice.

Acquisition of Territory

Theoretically, all the classical methods for acquiring territory, except those involving force, are acceptable to communist philosophy. In the practice of the Soviet Union, however, only two such methods of peaceful acquisition have been specifically recognized—discovery and transfer by plebiscite. In addition, the government of the U.S.S.R. has contributed its own theory of "terrestrial gravitation." The classical doctrine that discovery of new lands established the sovereignty in the state whose subjects made the discovery was conditioned upon effective occupation. This, however, is not considered essential by the Soviets—at least as regards polar lands. (Indeed, this is quite natural, inasmuch as the climatic conditions render it highly improbable that they can ever be "occupied," to say nothing of settlement by permanent communities. The only possible way of making use of them appears to be by seasonal exploitation.) The mere fact of discovery without occupation is claimed to be sufficient to vest rights of sovereignty.

Problem in the Arctic

The *terra nullius* of the North has long since ceased to be a neglected and unimportant region. In the years 1913 and 1914, Captain Vilkitzky discovered lands now known as Vilkitzky Island, the land of the Tsar Nicholas II, the land of Tsesarevich Alexei, the Starokadomski and Novopashennyi Islands. On September 20, 1916, the Russian Imperial Government notified the governments of all the Allied and friendly powers of the fact that these islands had been incorporated within the territory of the Russian Empire. The Soviet Government showed very keen interest in polar lands, and continued the policy of the former Russian Empire in sending one expedition after another into the Arctic. On August 30, 1923, the "Berta" was sent on a cruise under the command of Captain Isliamov. On August 23, 1926, another ship, the "Persei," sailed in the same direction with the expedition of the Maritime Institute. A year later, on August 26, 1927, another expedition of the same Institute on the "Zar-

nitsa" followed the "Persei." To extend the development of the Soviet scientific explorations in the Arctic, the Soviet Government issued a Decree on July 31, 1928, establishing a special committee for devising a five-year plan of scientific research in the Arctic. Besides sponsoring cruises, the Soviet Government proved its interest in the polar regions by diplomatic acts as well. In 1918, during the civil war that followed the Bolshevist *coup d'état*, certain foreign states had repeatedly attempted to seize islands in the Arctic which had been claimed by Russia. On November 4, 1924, Chicherin, then the People's Commissary for Foreign Affairs of the U.S.S.R., communicated to the governments of all states a special memorandum repeating the notification of the Russian Imperial Government of 1916, and expressly stating that the islands in the Arctic, north of the coast of the U.S.S.R., were considered by the Government of the Soviet Union as belonging to the latter.[83] Thus the dominion of the U.S.S.R. over the Arctic lands, which have been discovered but not occupied, north of the northern seacoast of the Soviet Union received express formulation. This constitutes the first modification of the doctrine of discovery put forth by the communists.

A Decree of the Central Executive Committee of the U.S.S.R. of April 15, 1926,[84] went still further. In it the following were declared part of the territory of the U.S.S.R.:

". . . all lands and islands located in the Arctic to the North, between the coast line of the U S.S.R. and the North Pole, both already discovered and *those which may be discovered in the future*, which at the time of the publication of the present decree are not recognized by the Government of the U.S.S.R. as the territory of any foreign state . . ." [85]

Thus, another modification of the doctrine of discovery has been introduced by the Soviet Union, namely, that irrespective of the nationality of the discoverers or explorers, sovereignty to lands discovered automatically vests with the state within whose sphere or sector of "terrestrial gravitation" the land is found. In other

[83] The text of this memorandum is given in Lakhtin, *Prava na Severnye Poliarnye Prostranstva*, p 44. *Cf.* also Lakhtin, "Rights over the Arctic," *A J I.L.*, XXV, 1930, pp. 703–717

[84] *Sobr. Zak. i Rasp. S.S S R.*, 1926, I, p. 586.

[85] Italics by author.

words, the doctrine of discovery is made inapplicable in the Arctic. According to the communists, the land that may be discovered therein in the future is a part of the national territory of the states subjacent to the Arctic, automatically, *by mere virtue of their being within the respective national sectors of "terrestrial gravitation."*

In this connection, it may be said that the above Decree of April 15, 1926, has been found unsatisfactory by some Soviet jurists,[36] because it mentions only "lands and islands." The suggestion has been introduced that ice fields should be considered as territory, subject to the same principles of state jurisdiction as *terra firma*.[37]

Plebiscite

The plebiscite is generally considered one of the most appropriate ways of acquiring territory by transfer from another state. Undoubtedly, the principle of self-determination, as formulated in the Declaration of Rights of the Peoples of Russia[38] and warmly defended by Ioffe and Trotzky at Brest-Litovsk in 1918,[39] is the main basis of the Soviet approach to the plebiscite as one of the ways for justifying the acquisition of territory. Referring to the international practice of the Soviet Union in this respect, Article 15 of the first treaty between the R.S.F.S.R. and Finland of March 1, 1918, *i.e.*, even prior to the Brest-Litovsk Treaty, provided that the district of Pechenga should be ceded to Finland upon condition that the local population show its consent to this transfer by plebiscite.[40]

Shortly before signing the treaty between the R.S.F.S.R. and Latvia in 1920, Chicherin, in his address at the meeting of the Central Executive Committee of the R.S.F.S.R. on June 17th, stated that there had been an intention to include in that treaty a provision concerning a plebiscite in the disputed districts of Drissa.[41] This had not materialized, however, because of disagreement between the Contracting Parties. The Soviet draft

[36] Korovin, "S.S.S.R. i Poliarnye Zemli," *Sovetskoe Pravo*, 1926, No. 3, pp. 45–46.
[37] Lakhtin, as *cited*, pp. 44ff.
[38] *Sobr Uzak. i Rasp R.S.F.S.R.*, 1917–18, I, p. 18.
[39] *Mirnye Peregovory v Brest-Litovske*, I, 1920, pp. 71–78, 101–125, 91–97, 142–164.
[40] *Izvestiia*, Mar. 10, 1918, No. 45
[41] *Vestnik N.K.I.D.*, 1920, Nos. 4–5, pp. 13–15.

had suggested that all the population, with the exception of *persons exploiting hired labor for personal gain*, should participate in the plebiscite. This was rejected by the Government of Latvia. As a result of this failure, no mention of a plebiscite appears in the treaties concluded by the R.S.F.S.R. with the newly formed republics of Estonia, Latvia, or Lithuania. In disputed regions the boundaries of these Baltic States were drawn by mixed "boundary commissions," whose decisions actually took the place of plebiscites.[42]

The protocol signed by the R.S.F.S.R. and Poland on February 24, 1921, shortly before the Treaty of Riga, likewise provides for a "boundary commission" in disputed regions, which, however, must act subject to the results of a plebiscite. Three weeks later this provision was included in the definitive Treaty of Peace signed at Riga on March 18, 1921.[43]

The principle of self-determination is also reflected in the plebiscites provided for in the treaties concluded between the R.S.F.S.R. and the countries in the Near East. Thus, Article 9 of the Treaty with Afghanistan, signed at Moscow on February 28, 1921, provided that

> "Russia is ready to cede to Afghanistan all regions along the boundary lines which belonged to her in the past century, this transfer being permissible only under condition that the free will of the population therein be secured by plebiscite." [44]

Similarly, the Treaty with the Khorezm Soviet People's Republic, signed at Moscow on September 13, 1920, in its Article 9 stipulates that the

> "territory of the Khanat of Khiva, which has been annexed by the former Russian Government, shall be ceded to the Khiva People's Soviet Republic under condition that the consent by free vote of the toiling masses in the regions annexed since 1872 be secured to this effect." [45]

[42] Note 2, Art. II, of the Soviet-Lithuanian Treaty of Peace; Note 2, Art. III, of the Soviet-Latvian Treaty of Peace; Note 2, Art. II, of the Soviet-Estonian Treaty of Peace (*Sborn. Deistv. Dogov*, I, 1924, pp. 99, 76, and 196, respectively; III, 106, L.N.T.S., II, 196, L.N.T.S., and XI, 30, L.N.T.S., respectively)

[43] *Sborn Deistv. Dogov*, I, 1924, p. 124; VI, 52, L.N.T.S.

[44] *Ibid.*, I, 1924, p. 40.

[45] *Ibid.*, I, 1924, p. 186.

Of the same import is Article 13 of the Treaty with Bukhara, signed at Moscow on March 4, 1921.[46] Thus, except for an inclination to limit participation in the plebiscite to the members of the proletarian class, the Soviets seem to have introduced no new doctrines here.

Waters

The term "territory" usually includes not only *terra firma*, or land, in the strict sense of the word, but also waters. The latter generally are divided into two groups, according to the nature of the jurisdiction exercised over them. One group comprises inclosed seas, lakes, and rivers flowing entirely within the territorial limits of a single state, and the other group coastal waters, international rivers, which either flow through several states or form the boundary line between states, and narrow straits. Aside from all these are the high seas.

Inland Waters

The Soviet Union does not deviate from the general practice in considering the waters of the first group as subject to its exclusive jurisdiction; indeed it goes even further and accounts them part of the national domain of the state. Article 15, of the Constitution of the R.S.F.S.R. of 1924, as ratified by the XII All-Russian Congress of Soviets, reads:

> "All land, forests, subsoil, waters, as well as factories and works, railways, fluvial and aërial transport and means of communication *are the property* of the Workers' and Peasants' State, on the basis determined by special laws of the Union of Socialist Soviet Republics and by the Supreme Organs of the Russian Socialist Federated Soviet Republic." [47]

This attitude of the Soviet Government towards inland waters is evidenced furthermore by its international practice. Thus, Article 32 of the Treaty of Commerce and Navigation with Italy of February 7, 1924, and Article 20 of a similar Treaty with Norway of December 15, 1925, stipulate that the "national régime" established by those treaties for the vessels of one Contracting Party in the waters of the other Party was not to apply to the inland waters. These examples indicate clearly that there is no innovation in international law as

[46] *Sborn. Deistv. Dogov.*, I, 1924, p. 42.
[47] *Sobr. Kodeksov R.S.F.S.R.*, 4-e izd., p. 6. (Italics by author.)

far as the communist practice in regard to inland waters is concerned.[48]

The Soviets recognize the distinction between the high seas, which do not constitute part of the territorial domain of any state, and are not subject to any national jurisdiction, and coastal, or territorial waters, which are subject to a certain degree of jurisdiction by particular states. This is evidenced by Article 9 of the Provisional Agreement between the R S.F.S.R. and the Ukrainian S.S.R. and the Austrian Republic, signed at Vienna on December 7, 1921, which among other things provides that: High Seas

"The Russian and Ukrainian Governments guarantee that *in their territorial waters Austrian ships will be treated in accordance with international law . . .*"[49]

Almost the same wording is found in Article 10 of the Provisional Agreement between the R.S.F.S.R. and Germany of May 6, 1921.[50]

A differentiation between territorial waters and the high seas is likewise implicit in agreements and regulations defining the extent of the former. Not only is the distinction between the high seas and territorial waters acknowledged by the Soviets, but the traditional "freedom" of the former is indirectly alluded to in Article 1 of the Protocol signed at Moscow on April 22, 1926,

[48] *Sborn. Deistv. Dogov*, II, 1925, p. 45, and III, 1927, p. 121, respectively.
[49] *Ibid.*, I, 1924, p. 38. (Italics by author.)
[50] *Ibid.*, I, 1924, p. 56. The recognition of the difference between the status of the high seas and of territorial waters by the Soviets may be indirectly deduced also from other international agreements Of such agreements reference may be made to the following: Article 10 of the Treaty between the Ukrainian S.S.R. and Latvia of August 3, 1921 (*ibid.*, p. 93; XVII, 318, L.N.T.S.), and Art. 7 of the Treaty with Lithuania of February 14, 1921 (*ibid*, p 109); Art. 13 of the Treaty of the R.S.F.S.R with Lithuania of July 12, 1920 (*ibid.*, p. 104; III, 106, L.N.T.S.); Art 17 of the Treaty of the R.S.F.S.R. with Estonia of February 2, 1920 (*ibid*, p. 205; XI, 30, L.N.T.S); Art. 13 of the Treaty of the Ukranian S.S.R with Estonia of November 25, 1921 (*ibid.*, p 210; XI, 122, L.N.T.S.) *Cf* also Art 2 of the Treaty with Great Britain of March 16, 1921 (*ibid.*, p. 48; IV, 128, L.N.T.S), Art. 7 of the Preliminary Agreement with Denmark of April 23, 1923 (*ibid.*, p. 66; XVIII, 16, L.N.T.S.); Art 4 of the Convention with Japan signed at Pekin on January 20, 1925 (*ibid*, III, 1927, p. 11; XXIV, 32, L.N.T.S.) Treaty of Commerce and Navigation with Italy of February 7, 1924 (*ibid.*, II, 1925, pp. 35-48); the Treaty with Germany of October 12, 1925 (*ibid.*, III, 1927, p. 74 *et seq.*; LIII, 7, L.N.T.S.); Treaty with Norway of December 15, 1925 (*ibid*, III, 1927, p. 114; XLII, 10, L.N.T.S); Treaty with Sweden of March 15, 1924 (*ibid*, I–II, 1928, p. 267; XXV, 252, L.N.T.S.); and Treaty with Finland of July 28, 1923 (*ibid*, I–II, 1928, p. 335; XXII, 102, L.N.T.S.).

by the technical experts of Estonia, Finland, and the U.S.S.R., which, after providing for supervision over certain maritime routes,[51] refers to other waters

"in regard to which the *principles of international law relating to freedom of the seas* shall apply . . ."[52]

The adherence of the Soviets to the general rule of international law regarding the freedom of the high seas is thus evident. Special mention must be made, however, of the high seas in the Arctic. In the discussion of *terra firma* in the Arctic, the novel idea of "terrestrial gravitation" was pointed out, according to which the whole Arctic is divided into national sectors, determined by the extent of the coast line of the states bordering upon the Arctic regions. Applied to the high seas, this theory amounts to a sub-

[51] In the Russian official text the expressions used are *"granitsy"* and *"putei,"* which mean "boundaries," and "ways," or "routes," respectively.

[52] XLV, 184, L.N.T.S. This Protocol was signed in virtue of Article 2 of the Additional Agreement between Estonia, Finland, and the U S S.R. of August 19, 1925, as an integral part of the general Convention signed at Helsingfors on the same date by Germany, Denmark, Estonia, Finland, Latvia, Lithuania, Norway, Poland and the Free City of Danzig, Sweden, and the U S S R., for the suppression of contraband traffic in alcoholic liquors (XLII, 73, L N.T.S.). According to this Article, the exact position of the international maritime routes mentioned in the Convention of 1925 were to be determined by experts of Estonia, Finland, and the U S.S.R (Italics by author.)

The attitude of a state to other problems of the high seas may be indirectly deduced from its national legislation on maritime navigation and commerce. In the Soviet Union such legislation is quite extensive: Rules governing the right to fly the flag, registry and ship's papers are found in the Decree of the Council of Peoples' Commissaries of May 20, 1921 (*Sobr. Uzak. i Rasp. R.S.F.S R.*, 1921, p. 334), modified by the Decree of the Council of Peoples' Commissaries of the *U.S.S.R. of September 5, 1924* (*Sobr. Zak. i Rasp. S.S S R*, 1924, I, p 148); rules on sale and transfer of vessels, in the Decree of August 8, 1924 (*ibid.*, 1924, p. 54); rules on charter, reflecting the Regulations of The Hague and Brussels Conventions of 1921 and 1922, respectively, are embodied in the Decree of May 28, 1926 (*Sobr. Zak. i Rasp. S.S.S.R.*, 1926, I, pp. 690–700); liability for accidents and salvage are dealt with in the Decrees of October 20, 1920, and December 23, 1924 (*Sobr Uzak. i Rasp R.S F S R*, 1920, p. 454, and *Sobr. Zak i Rasp. S.S.S.R*, 1925, I, pp. 110–112), and show the influence of the York–Antwerp Rules of 1890 and of the Brussels Convention of September 23, 1910; instructions expressly prescribing when the York–Antwerp Rules of 1890 and the more recent Regulations of The Hague and Brussels must be followed are found in the Decrees of October 17, 1920, and of July 27, 1926 (*Sobr. Uzak. i Rasp. R.S F S.R.*, 1920, p. 686, and *Sobr. Zak. i Rasp. S.S.S.R.*, 1926, I, pp. 1008–1011, respectively). Provisions for insurance are contained in the Decree of the Central Executive Committee of September 18, 1925, and of the People's Commissary for Finance of June 17, 1922, and November 18, 1925; port regulations are embodied in the Decrees of February 19, 1926, and March 24, 1926, and also in the Customs Code of December 12, 1924. See also Decree of the People's Commissariat for Communications of August 19, 1924, No. 1684; Articles 86 and 93 of the Criminal Code of the R S F S R. of 1926, and Instructions of the People's Commissariat for Communications of March 5, 1925.

division of the whole open sea of the Arctic among certain states. This necessarily leads to a conflict between the principle of the freedom of the high seas, and national jurisdiction over the individual sectors. With this exception as to the waters of the Arctic, however, the Soviet attitude towards the high seas, as in the case of inland waters, is in conformity with the general rules of international law.

Territorial Waters

Extent

The question of the extent of territorial waters has been discussed at length by authorities on international law. International practice shows that this problem has not yet found a uniform solution. A three-mile limit prevailed in pre-revolutionary Russia, as well as in Germany, France, England and the United States of America.[53] Other countries had four, six, and twelve-mile limits.[54] It was suggested by the Institute of International Law in 1897 that a uniform limit of six miles for all nations be recognized.[55]

By the Decree of the Council of Peoples' Commissaries of the R.S.F.S.R. of May 24, 1921, a twelve-mile limit from mean low-water mark was virtually established for territorial or coastal waters in the White Sea and in the Arctic Ocean.[56] On June 15, 1927, this twelve-mile limit was promulgated in the Statute on Protection of the Boundaries of the U.S.S.R., and was applied to all the coastal waters of the Soviet Union, with the "exception of cases [otherwise] expressly provided for by international agreements entered into by the U.S.S.R." [57] Such an exception was found in the Peace Treaty between the R.S.F.S.R. and Finland, signed at Tartu on October 14, 1920. Article 3 of this Treaty mutually established the four-mile limit for the territorial

[53] Other countries claiming a three-mile limit are Denmark, Ireland, Canada, the Union of South Africa, India, Australia, the Netherlands, Poland, Estonia, Greece, Egypt, China, and Japan.

[54] Thus Finland, Iceland, Sweden, and Norway claim a four-mile limit; Latvia, Italy, Spain, Turkey, Persia, Roumania, Yugoslavia, Cuba, Brazil, Columbia, and Uruguay a six-mile limit, while Portugal claims a twelve-mile limit.

[55] As generally accepted, a nautical mile is equivalent to one-sixtieth of a degree of longitude at the equator At the present, France, Germany, Italy, the Netherlands, Norway, Poland, Roumania, Spain, Sweden, and Uruguay accept 1853.2 meters as a nautical mile. The Argentine, Canada, China, Great Britain, Japan, and the United States of American figure it at 1855 meters (*Annuaire*, Bureau des Longitudes, pp. 417 *et seq.*).

[56] *Sobr Uzak. i Rasp R.S.F.S.R.*, 1921, p. 351.

[57] *Sobr. Zak i Rasp. S.S.S.R.*, 1927, I, p. 122.

waters for each Contracting Party, except for the islands ceded to Finland, as to which the limit was set at three miles.[58] After the ultimatum of Lord Curzon of May 8, 1923, British subjects were allowed to fish in the northern waters of the Soviet Union outside the three-mile limit "pending the settlement of this question in the shortest possible time, by an international conference." [59]

Régime Governing

Not only the extent of territorial waters, but the régime governing them, presents problems of international law. The rule is that notwithstanding the fact that the jurisdiction of a particular state extends over territorial waters, the state has no right to prevent the innocent passage of merchant vessels of other states through such waters. The passage of a vessel of war, however, through the territorial waters of a state, without prior notice, may give rise to undesirable political complications. Thus, in a protest communicated on December 5, 1924, to Charles E. Hughes, Secretary of State of the United States, on the Bay of Emma incident, Chicherin said:

". . . emphasizing, first of all, the fact that a United States man-of-war has several times visited the territorial waters of the U.S.S.R. without any due consent of the latter, which is contrary to international law, I must call attention to the fact that the erection of such a station [geodetic survey] . . . is a gross violation of the sovereignty of the Soviet Republics." [60]

The text of this protest suggests the idea that the Soviets make the ordinary distinction between the passage through their territorial waters of war and commercial vessels. Whereas no Soviet law definitely provides for the innocent passage of merchant vessels, the Statute on Protection of Boundaries of the U.S.S.R. of June 15, 1927, indirectly involves a recognition of this right. Article 23 reads:

"Throughout the whole extent of fluvial boundaries of the Union of Socialist Soviet Republics, as well as of territorial waters . . . of the high seas [*sic*!] washing the shores of the Union of Socialist Soviet Republics, all non-war vessels, without distinction of flag, are

[58] *Sborn. Deistv Dogov.*, I, 1924, p. 172; III, 6, L.N.T.S.
[59] *See* the memorandum communicated by Krassin, May 23, 1923, *supra*, p. 46.
[60] *Mezhdunarodnaia Letopis'*, 1925, I, p. 40. *Cf. Supra*, p. 39.

subject to the control of the coast-guard of the United General Political Administration of the State." [61]

Fishery Rights

There are economic, as well as political, problems connected with the exercise of jurisdiction over territorial waters. One concerns the exclusive fishery rights usually claimed by the littoral state for its citizens. To show that the Soviets take full advantage of such fishing privileges, it will suffice to mention a few instances of their legislation and practice. Article 3 of the Statute on Fisheries, promulgated by the Council of Labor and Defense on July 3, 1925, provides that the right of exploitation of certain maritime fisheries belongs exclusively to the institutions and citizens of the U.S.S.R.[62] The note to Article 6 of the same statute reads:

"Fisheries in the seas washing the territory of the U.S.S R. territorial waters, as well as all inland waters, are to be classified as national fisheries." [63]

Among the international agreements on this subject is a convention signed by Finland and the R.S.F.S.R. on September 20, 1922, by Article 1 of which

"The Contracting States retain the exclusive right of fishing in their own territorial waters in the Gulf of Finland for their respective citizens." [64]

Another convention was signed at Helsingfors on October 21, 1922, by which the R.S.F.S.R. and Finland agreed that the citizens of each country were mutually granted fishing rights in the territorial waters of the other in the Arctic.[65] Still another convention between these states, of October 28, 1922, secured the same mutual rights in the territorial waters of these two countries in the Lake of Ladoga.[66]

Particularly detailed provisions are contained in the Convention

[61] *Sobr Zak. i Rasp SSSR*, 1927, I, p 1223 In Russian the title is "Ob'edinennoe Gosudarstvennoe Politicheskoe Upravlenie," better known as "OGPU"

[62] *Ibid*, 1925, I, pp 810–811. *Cf.* also Decrees of May 24, 1921, and May 31, 1921 (*Sobr Uzak i Rasp RSFSR.*, 1921, pp 351–352, and 359–361, respectively), and the Decree of March 2, 1923 (*ibid*, 1923, I, pp 676–677).

[63] *Ibid.*, 1925, I, p. 811.

[64] *Sborn Deistv Dogov.*, I–II, 1928, p. 248, XIX, 144, L.N.T.S.

[65] *Ibid*, I–II, 1928, p. 259; XXIX, 128, L N T S

[66] *Ibid.*, I, 1924, p 262, XXIX, 212, L.N T.S.

on Fisheries between the U.S.S.R. and Japan, signed at Peking on January 23, 1928.[67] Most important are Articles 1 and 6. The first grants to Japanese nationals the right to fish "along the coast line of the U.S.S.R. in the Japanese, Okhotsk, and Bering Seas, with the exception of rivers and bays." Article 6 provides that there shall be no restrictions as regards the nationality or citizenship of men employed by the Japanese fishermen as help. This provision seems broad enough to accord an actual privilege of fishing to nationals of third states, even if there be no special agreements between these states and the U.S.S R. It must be noted, however, that most of the Soviet treaties of Commerce and Navigation, while as a general rule placing the vessels of the other Contracting Parties on a parity with their own as regards navigation, contain special provisions to the effect that this "national régime" is not extended to vessels engaged in fishing.[68]

As to the Arctic, the natural consequence of the Soviet theory of "terrestrial gravitation" is that all waters within each national sector become the domain of the respective subjacent littoral states. In practice, however, the U.S.S.R. does not disregard the difference between territorial waters and high seas even in the Arctic. Thus the Decree of the Council of Peoples' Commissaries of the R.S.F.S.R. of May 24, 1921, reads:

"1. The exclusive right of the R.S.F.S.R. to fisheries is extended: . . . in the Arctic for twelve miles from mean low water mark along the coast of the mainland as well as of the islands from the state boundary with Finland to the Northern headland on Novaia Zemlia.

"2. In these waters fishing rights are given only to Russian citizens by issuing special written permits . . ." [69]

The reason for the inconsistency of claiming jurisdiction over the whole Arctic sector, and at the same time insisting upon an exclusive right of fishery in a part of it, is obviously political and not academic.[70]

[67] *Sborn. Deistv. Dogov.*, VI, 1931, pp. 148ff; LXXX, 341, L N T S.

[68] Art. 32 of the Treaty with Italy of Feb. 7, 1924; Art. 2 of the Treaty with Germany of Oct. 12, 1925 (LIII, 7, L.N.T.S.); Art 20 of the Treaty with Norway of Dec 15, 1925 (XLVII, 10, L.N.T S); Art. 22 of the Treaty with Turkey of March 11, 1927 (Appendix XXIV).

[69] *Sobr. Uzak i Rasp. R.S.F.S.R*, 1921, p. 351.

[70] Indirectly the Soviets' claims to jurisdiction over their territorial waters

"Hot pursuit"

The principle of international law known as "hot pursuit" serves as a link between the problem of the freedom of the high seas and the jurisdiction of the littoral state over territorial waters. According to this doctrine, a state may continue on the high seas the pursuit of a vessel flying a flag of another state and may arrest this vessel for violation of its laws, provided that such pursuit began while the vessel was in the territorial waters of that state, and that the pursuit is continuously sustained. If such vessel succeeds in entering the territorial waters of its own, or of any third state, the pursuit must cease, and cannot be resumed when the offending vessel takes to the high seas, after having found refuge in such territorial waters. Suggestions have been made that the pursuit may also begin outside the three-mile limit, if within an area over which a certain degree of jurisdiction is legally exercised by the littoral state. So far, however, this idea has not developed into a recognized rule of international law.

The attitude of the Soviets towards this principle of pursuit on the high seas is reflected both in their legislation and in international agreements. Article 27 of the Statute on Protection of State Boundaries of the Union of S.S.R. provides:

"The pursuit of a vessel which has not complied with the orders of the coast guard within territorial waters . . . may be continued beyond these waters on the high seas, but in any case must be suspended when the pursued vessel enters the waters of a foreign state, and must cease

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is seen also in the Decree of September 27, 1922, Article 2 of which provides that the

" . . transportation of passengers and cargo between the ports of the R S F.S R on the same sea, as well as between the Soviet ports of different seas, is the exclusive right of vessels flying the Russian flag, the Azov and Black seas being considered as one sea, as also the White and Arctic" (*Sobr. Uzak. i Rasp. R.S F S R*, 1922, I, p 1004.)

This Decree was replaced two years later by the Decree of the Council of Peoples' Commissaries of the *U S S R of July 8, 1924* The provision of Art. 2 of the Decree of 1922 remained, however, unchanged (*Sobr Zak i Rasp S S.S.R.*, 1914, I, p 8) By the Decree of Oct. 16, 1926, this provision was amended to the effect that the Japanese Sea, the Sea of Okhotsk, and the Bering Sea were proclaimed as one sea in respect to the Soviet legislation on coastal trade (*Sobr Zak. i Rasp. S S.S.R*, 1926, I, p 1391). When the Code of Maritime Commercial Navigation of the U S.S R. came into force on July 17, 1929, the fundamental provision of Article 2 of the above Decree of 1922 became a statutory law, its text being embodied in Article 71 of the Code without change (*Sobr Zak i Rasp S.S.S.R*, 1929, I p. 779).

completely when the [pursued] vessel flying a foreign flag enters a foreign port." [71]

This principle is likewise dealt with in Article 9 of the International Convention regarding the Suppression of Contraband Traffic in Alcoholic Liquors, signed at Helsingfors on August 19, 1925, by Germany, Denmark, Estonia, Finland, Latvia, Lithuania, Norway, Poland, the Free City of Danzig, Sweden, and the Union of Socialist Soviet Republics:

"The Contracting Parties undertake to raise no objection to the application by any one [of the Contracting Parties] of its laws, within a zone extending to twelve nautical miles from the coast or from the exterior limit of the archipelagos, to vessels which are obviously engaged in contraband traffic. If a vessel suspected of engaging in contraband traffic is discovered in the extended zone hereinbefore described, and escapes out of this zone, the authorities of the country exercising control over the zone in question may pursue the vessel beyond such zone into the open sea and exercise the same rights in respect of it as if it were seized within the zone." [72]

Article 3 of the Convention between the Finnish Republic and the U.S.S.R. Regarding Customs Supervision in the Gulf of Finland, signed at Moscow April 13, 1929, reads:

"The Contracting Parties agree that a vessel engaged in smuggling in the zones defined in Article 1 of the Present Convention, or suspected of being so engaged, may be pursued and stopped by the coast-guard vessels of the country exercising jurisdiction over the customs zone in question, even beyond the limits of such zone.

"Such pursuit and detention, however, may not be effected within the territorial waters or within the customs zones of the other Contracting Party." [73]

[71] Decree of the Central Executive Committee and the Council of Peoples' Commissaries of June 15, 1927 (*Sobr Zak i Rasp SSSR*, 1927, I, pp. 1223–1224). The wording "enters a foreign port" leaves open to question whether it is a port of the country whose flag the pursued vessel is flying or any other foreign port. A comparison of the expressions "suspended" and "cease completely" suggests the first assumption.

[72] *Sborn. Deistv. Dogov.*, V, 1930, pp. 46ff ; LXXXVIII, 327, L.N.T.S.

[73] *Ibid*, V, 1930, pp. 41, XCVI, 106, L.N.T.S. The Régime of the Gulf of Finland in force today is the result of a series of international agreements between the U.S.S.R. and Finland. Besides the Conventions of August 19, 1925, and of July 13, 1929, reference must be made to the following: the Agreement with Finland signed on April 28, 1923, on maintaining order in non-territorial waters, and on the maintenance of the pilot service there (*Sborn Deistv. Dogov.*, I–II, 1928, pp 335 *et seq* ; XXII, 102, L.N.T.S), instructions issued for the vessels in the service of maintaining this order, annexed to the Protocol for the Second Soviet-

These illustrations show that the Soviets recognize the traditional doctrine of continuous pursuit upon the high seas, and suggest that they permit its inception even outside the generally established limits of territorial waters.

The attitude of the Soviets towards the status of international rivers is best seen in the instance of the Niemen. When in 1922 the Soviet Government was informed that the Allied and Associated Powers proposed that the Lithuanian Government consent to the provisions of the Treaty of Versailles relative to the internationalization of the Niemen River as an international waterway,[74] it immediately forwarded a protest to the Lithuanian Minister of Foreign Affairs, which read in part as follows:

International Rivers

"The international character of the Niemen River was recognized more than one hundred years ago in Article 14 of the Act of the Congress of Vienna. . . . The Russian Government is unable to give an immediate decision on the matter, because this problem in all its entirety must without doubt be submitted to discussion by all the littoral states and even those within whose boundaries the subsidiaries of the Niemen have their source." [75]

Although the Soviets go further than was suggested at the Barcelona Conference of April 20, 1921, and assimilate to states littoral to navigable reaches of the river states within whose boundaries the subsidiaries rise, their attitude betokens no departure from the fundamental doctrines of international law regarding international rivers.

To summarize, it may be said that both the national legislation and the international practice of the U.S.S.R. have demonstrated its adherence to the common rule of nations, by which the high seas are left free for the navigation of all nations, while inland and territorial waters are within the jurisdiction of the state, with all the consequences resulting therefrom.

Straits

The Soviet attitude toward straits is less clearly defined. On

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Finnish Convention of Sept 25, 1925 (these conferences are called every year in conformity with Article 10 of the above agreement of July 28, 1923 (*Sborn. Deistv. Dogov*, II, 1925, p. 112); and the Protocol of Experts of April 22, 1926 (*supra*, p. 61).

[74] Arts 342–345

[75] Kliuchnikov i Sabanin, *as cited*, p. 200.

March 16, 1921, the R.S.F.S.R. concluded a Treaty with Turkey at Moscow, Article 5 of which reads:

". . . in order to secure for commercial purposes free passage through the Straits for all people, both Contracting Parties agree to submit the final decision upon the international status of the Black Sea and of the Straits to a special conference, provided that its decisions shall not affect the complete sovereignty of Turkey, or the safety of Turkey and her capital—Constantinople." [76]

The history of the Lausanne Conference of 1922 shows that the Soviet delegation was admitted to the conference only because of the communist interest in the problem of the Bosporus and the Dardanelles.[77] Furthermore, it shows that the delegates of the R.S.F.S.R., while professing their willingness to agree in principle to the freedom of the Straits, at the same time strongly supported the demand of Turkey that the complete control over the Straits be left to her.[78] The fact that they consistently opposed the passage of men-of-war through the Straits may seem inconsistent with the idea of freedom of passage. On the other hand, the fact that the Lausanne Convention of August 14, 1923, was signed by the Soviet delegates [79] suggests that the Soviets were inclined to admit a difference between the freedom of the Straits during peace and during war.

Another illustration of the attitude of the Soviet Union to the problem of straits is seen in the Supplement to Article 7 of the Treaty concluded between Germany and the U.S.S.R. on October 12, 1925, to the effect that the stipulations of the Copenhagen Resolutions of March 14, 1857, establishing the freedom of the Danish Sound and the Belts should be binding upon both Contracting Parties.[80] The apparent differences between the

[76] *Sborn. Deistv Dogov.*, I, 1924, p 156.
[77] *Lausanne Conference, 1922–1923*, pp 128–131
[78] *Ibid.*, pp. 127, 156–159, 268–271, 280–284, 449–450
[79] This Convention has never been ratified by the Soviet Government
[80] *Sborn Deistv. Dogov.*, III, 1927, p. 76; LIII, 7, L.N.T.S. The Treaty of Copenhagen, March 14, 1857, between Great Britain, Austria, Belgium, France, Hanover, Mecklenburg, Schwerin, Oldenburg, the Netherlands, Prussia, Russia, Sweden and Norway, and the Hanse Towns, on the one part, and Denmark, on the other part, for the Redemption of the Sound Dues, reads in part: "ARTICLE I. De ne prelever acun droit de douane, de tonnage, de basilage . . . sur les navires qui se rendront de la Mer de Nord dans la Baltique, ou vice versa, en passant par les Belts ou de Sund, soit qu'ils se bornent à traverser les eaux danoises. . ." (47 *Brit & For State Papers*, XLVII, p. 24)

attitude of the Soviets towards the problem of the Straits at the Lausanne Conference in 1922–1923, and of the Danish Sound and of the Belts in their Treaty with Germany in 1925, suggests that the whole problem of straits is viewed by communist statesmen not so much as an *ex principio* concern of international law, as a matter *de facto* international politics and possibilities.

Aërial Domain

With the progress of science and with the conquest of the air by man, *terra firma* and water have ceased to be the only components of the domain of nations, as understood in international law. The air has become a matter of considerable international concern, not only in academic discussion, but practically as well, for states recognize the potential necessity of protecting themselves against aggression which may now be launched even from the air.

International Aspects

The theories relative to the air space over land and water may be summarized chronologically as follows: First, the theory of the unlimited freedom of the air, based upon the Roman principle of *res communis omnium* and on the analogy between the air and *mare librum*. The most recent definition of this theory was given by Nys at the Ghent session of the Institute of International Law in 1902.[81] The second theory is that of the "zones," supported by Fauchille, and later by Merignac, Rolland, and Holzendorff. According to this theory, two "air zones" were suggested, of which the one adjacent to the land or water was to be a "nationalized zone," subject to a régime similar to that of the "coastal seas." The other was to extend above the first *usque ad cœlum*, and be absolutely free. The third is a modification of Fauchille's original theory, accepted by the *Comité Juridique International de l'Aviation*, which at its first meeting in 1911 made a draft of a proposed international air code. Article 1 of this draft, as submitted to the Second Congress at Geneva in 1912, provided:

"Aërial navigation is free, with the exception of the rights of the subjacent state to take measures which are necessary for protection of its safety, and for the safety of the life and property of its people."[82]

[81] Nys, "Droit et Aérostats," *Révue de Droit International*, 1902, pp 501 *et seq.*

[82] *Deuxième Congrès du Comité Juridique International de l'Aviation.* Paris, 1912.

This theory of limited freedom of the air has been supported by Meyer, Oppenheim, Garner, and several others.[83] The fourth theory is the theory of "limited sovereignty," as supported by Baldwin, Grünwald, and Meurer.[84] The fifth and final theory is the theory of unlimited sovereignty over the air, as governed at present by the Convention for the Regulation of Aërial Navigation, of October 13, 1919, and two amending protocols. Article I of the Convention declares that

"The High Contracting Parties recognize that each state has complete and exclusive sovereignty over the air space above its territory." [85]

Numerous other international agreements, either bilateral or multilateral, entered into during the last decade, contain principles which in general resemble those embodied in the above-mentioned Convention of 1919. Whereas the first three theories started with the idea of freedom of the air, limited in various degrees, the last two are based upon the theory of the sovereignty of the state. While the fourth theory advances the idea of a limitation upon this sovereignty, the fifth recognizes its absolute character.

Of these five theories, the last is the most acceptable for the Soviet Union. When in 1917 the Communist Régime was established in Russia, the first three theories had already lost their significance. The fourth was logically impossible for them, because no theory of limited sovereignty is consistent with communist philosophy. Moreover, from the practical point of view, the Soviet Union, which finds itself surrounded by non-communist states, must embrace the theory affording the greatest degree of protection against foreign aggression.

Regarded objectively, the sovereignty of the subjacent state over its air space may be considered in three aspects. The first is international, defining the rights of foreigners in regard to the air space. The second is national, defining the rights of its nation-

[83] Meyer, *Die Luftschiffahrt in Kriegsrechtlicher Beleuchtung*, Frankfurt, A. M, 1909. Garner, "La Réglementation de la Navigation Aérienne," *Rév. de Dr. Inter et de Légis Comp*, 1923, Nos 4–5

[84] Baldwin, *Law of the Air-Ship*, 1910. Grünwald, *Das Luftsrecht in Völkerrechtlicher und Strafrechtlicher Beziehung*, Hanover, 1908. *Meurer, Luftschiffahrtsrecht*, Berlin, 1909.

[85] XI, 190, L.N.T.S.; see also Garner, *Recent Developments of International Law*, 1925.

als *vis-à-vis* the state, and the third is the domestic administration (police) of the air domain.

Soviet National Legislation

The earliest Soviet air law is found in the Decree of the Council of Peoples' Commissaries of the R.S.F.S.R of January 17, 1921.[86] This document contains no specific statement regarding sovereignty. Individual articles, however, attempt to regulate foreign traffic, define the relation of the Soviet State to its air space, and outline measures of control over it. Article 1 of this instrument reads:

"The Council of Peoples' Commissaries has decreed: 1—[To establish] the following rules for aërial transportation in the air space over the territory of the R.S.F.S.R. and over its territorial waters." [87]

Whereas there is no direct declaration here of sovereignty over the air, the expression "decreed" in the first sentence may be construed as presupposing paramount authority over the air above R.S.F.S.R. territory. Articles 15 and 16 prove that the Soviet Government in fact claims sovereignty over the air, for by these articles the Soviet Government allows foreign aircraft to cross its boundaries only by a special permit, defines the places where the crossing must take place, as well as prescribes an altitude—fifteen hundred meters—at which the aircraft must fly.[88] Furthermore, they provide that the crossing may be made only in the daytime, and that the aircraft must follow a defined route.[89] Other provisions of this decree, to the effect that the first landing on territory of the Soviet Union, as well as the final take-off of the foreign craft, are restricted to special aërodromes, prove that the practice of the Soviet Government follows very closely that of most non-communist states.

There are also provisions prescribing customs inspection,[90] establishing rules relative to "ship's papers and documents," [91] limiting the transportation of certain goods,[92] forbidding the

[86] *Sobr. Uzak i Rasp. R.S.F.S.R*, 1921, pp. 49–51.
[87] *Ibid.*, 1921, p 49
[88] *Ibid.*, 1921, pp 50–57
[89] Similar provision is found also in Art 7 of the Decree of June 15, 1927, on "Protection of State Boundaries of the Soviet Union" (*Sobr. Zak. i Rasp. S.S.S.R*, 1927, I, p 1219).
[90] Art. 19.
[91] Arts. 3 and 14
[92] Art 17.

making of pictures from the air and sending hostile signals or communications by radio.[93] Article 7, furthermore, states that

". . . the Revolutionary War Council of the Republic has the right to forbid or limit by necessary restrictions the passage [of any aircraft] over any place in the territory of the Republic." [94]

This proves that "forbidden" or "closed" zones, as they are termed in general international practice, are not unknown to the Soviet Government.

Some of these restrictions on the free use of the air space are included in a later Decree of the Central Executive Committee of the U.S.S.R. of June 15, 1927, concerning the protection of state boundaries.[95] The Consular Service Regulations, enacted by decree of the Central Executive Committee of the U.S.S.R. of January 8, 1926, contain several provisions relative to the duties of Soviet consuls abroad in matters concerning Soviet aircraft flying in foreign countries.[96] Although not directly referring to the problem of the sovereignty over the air, these regulations, as well as all other supplementary regulations and ordinances, aid considerably in understanding the attitude of the Soviet Union to the air as part of the national domain, and show how closely it follows the international practice in regard to the air space.[97]

Code 1932

On April 27, 1932, a new Air Code was promulgated, which at present constitutes the main body of the Soviet air law in force.[98] Superseding all previously existing laws on the air, this code con-

[93] Art 10.
[94] *Sobr. Uzak i Rasp. R S F S.R.*, 1921, p. 50.
[95] *Sobr. Zak. i Rasp S.S.S.R.*, 1927, I, pp. 1218ff.
[96] *Sobr. Zak i Rasp. S.S.S R*, 1926, I, pp. 113–115. For other material see Decree of the Council of Peoples' Commissaries of the U.S S R. of Dec. 11, 1923, on fines and penalties for violation of rules on flying (*Vestn. TsIK, S.N K i S.T.O. S.S.S R*, 1923, No. 12, par. 339) *Cf* also decrees of July 10, 1929, and of July 5, 1931 (*Vestn. TsIK, S.N.K. i S.T.O. S S S R*, 1924, No 6, par. 208; *Sobr Zak. i Rasp. S.S.S.R.*, 1929, I, p. 1100; and *ibid*, 1931, I, pp. 536–537, respectively). For detailed list of Soviet laws, regulations, and instructions published prior to 1927 see *Voprosy Vozdushnogo Prava*, I, pp. 284–286, and *Sbornik Zakonov i Rasporiashenii po Grazhdanskoi Aviatsii s kommentariiami Prof. I. S. Pereterskogo*, 2-e izd., 1926.
[97] Illuminating material on the attitude of the Soviets to the various problems of international law of the air is to be found in *Voprosy Vozdushnogo Prava*, published in Moscow, where several works of Soviet authorities on the subject have appeared Unfortunately, only two volumes have been published
[98] *Sobr Zak. i Rasp. S.S.S.R.*, 1932, I, pp. 304ff For text see Appendix XII.

sists of nine chapters, of which the first and seventh are of particular interest for the present study. The first chapter, among other things, defines the air space as "the space above the land and fluvial territory of the Union of S.S.R., and above the territorial waters established by the laws of the Union of S.S.R." [99] In the same chapter, for the first time in Soviet air laws, a definite rule in regard to the sovereignty over the air appears:

"To the Union of S.S.R belongs the complete and exclusive sovereignty over the air space of the Union of S S.R." [100]

Chapter VII deals with the rules on international flying, which follow closely the provisions of international conventions, particularly that for the Regulation of Aërial Navigation of October 13, 1919.[101]

Soviet Treaties

So much for legislation dealing with the international aspects of the problem of the air space. The international practice of the Soviet Union in this regard offers much less material for the present study. It has been said that necessity for self-protection is the important factor in establishing the present-day rule that sovereignty over the air space belongs to the subjacent state. Of all the international agreements entered into by the Soviets, only in the Peace Treaty with Finland of October 14, 1920, has this matter been touched upon. Article 6 of this Treaty reads:

". . . Finland guarantees that she will not maintain in the waters contiguous to her seaboard in the Arctic Ocean . . . submarines or armed aëroplanes." [102]

There are two agreements which have been entered into by the Soviet Union establishing international air lines for postal and passenger transportation. One is with Afghanistan, signed at Kabul on November 28, 1927,[103] and the other is the supplementary protocol to the Postal Convention between the U.S.S.R. and Persia, of April 25, 1923, signed at Teheran on November

[99] Art. 1, Cl. 2
[100] Art. 2
[101] Compare Arts. 2 and 35–52 of the Soviet Air Code with Arts 1–4 and 11–25 of the Convention for the Regulation of Aërial Navigation of Oct 13, 1919 (Great Britain, Treaty Series, 1922, No 1 [Cmd. 1571], pp. 3ff).
[102] *Sborn. Deistv Dogov.*, I, 1924, p. 174, III, 6, L N T S
[103] *Ibid.*, IV, 1928, pp. 160–162.

23, 1927. Only the latter instrument contains a provision regarding exercise of jurisdiction by the subjacent state. Its fourth article reads:

"The aircraft and their personnel shall be subject to the laws and regulations of the State over whose territory they are flying." [104]

Limited though they may be, these illustrations tend to prove that in international practice, as in domestic legislation, the Soviets are not far from non-communist conceptions regarding jurisdiction over the air.

A specific phase of this problem is that of sovereignty over the air in the Arctic. It has been stated that the Soviet Union, as regards the lands and waters of the Arctic regions, applies the theory of "terrestrial gravitation," according to which these regions are divided into sectors belonging to the states geographically "supporting" them. The omission of any mention of the air in the text of the Decree of April 15, 1926, by which this principle was established, met with severe criticism on the part of communist international law scholars. This fact leaves little room for doubt that the Soviet authorities will find a way to prove that the atmosphere above the Soviet sector is part of their aërial domain.

As to the attitude of the Soviet Union to the problem of the control of the air directly above the state frontiers, there are no official documents. However, Lakhtin, a Director of the Section of Aërial Law of the Union of Societies "Ossoviahim" of the U.S.S.R., and a recognized Soviet authority on air law, has expressed himself on the subject.[105] For ocean frontiers he suggests a coastal air zone equal to the flying distance per hour of an aircraft. For inter-state boundaries he suggests the establishment of neutral air zones flying along which would be entirely prohibited, the aircraft being allowed only to cross them when flying from one country to another. Whatever the benefit of

[104] *Sborn Deistv Dogov.*, IV, 1928, pp 233–234. On the participation of the U.S.S.R. in the international conferences on air mail and air transport in 1925–1929, see Girshfield, "Pravovoe regulirovanie vozdushnoi pochty," *Voprosy Vozdushnogo Prava*, II, pp 72ff

[105] See Lakhtin, "Problema Suvereniteta Gosudarstva na Vozdushnoe Prostranstvo," *Meshdunarodnoe Pravo*, I, pp. 70ff, and Korovin, "Problema Vozdushnoi Okupatzii," *Voprosy Vozdushnogo Prava*, I, pp. 109ff.

these suggestions may be, they are further proof that the problem of sovereignty over the "aerial domain" of the state has been extensively discussed in the Soviet Union.

Domestic Aspects

The second aspect of sovereignty over the air is that of the position of the state itself in regard to its air space. The Soviet Union has reserved to the state the exclusive right of using the air space. Thus, Article 23 of the Civil Code [106] prohibits private ownership of any kind of aircraft, while Article 53 of the same Code reads:

". . . flying machines are the exclusive property of the State." [107]

Article 15 of the Constitution of the R.S.F.S.R. provides that

". . . transportation and means of communication by air are the property of the State of Workers and Peasants." [108]

Administration

The third, and last, aspect of sovereignty over the air concerns the administration of this domain. In brief it may be said that the Soviet Union follows very closely general international practice in this respect. Like most states, the Soviet Government provides rules relative to the crew and passengers of foreign aircraft, as well as to navigation itself. Thus, according to the laws of the U.S.S.R., the crew and passengers of foreign craft, when flying over Soviet territory, are subject to Soviet laws,[109] and any violation of rules prescribed in these laws may result in imprisonment for a period of ten years and a considerable fine.[110] In extreme cases, such as crossing the state frontier without a permit, or flying over "closed" zones, the local Soviet military authorities are given the right to use all available means to force the aircraft to land.[111]

To summarize, it may be said that although prior to 1932 there

[106] *Sobr. Kodeksov R.S.F.S.R.*, 4-e izd., p. 418.
[107] *Ibid.*, p. 421
[108] *Konstitutsiia R.S.F.S.R.*, par. 7.
[109] Arts. 21 and 26 of the Decree of Jan. 17, 1921 (*supra*, p. 73). *See also*: Soviet-Persian Protocol of Nov. 23, 1927 (*supra*, p. 76); Art. 52 of the Air Code of 1932 (*supra*, p. 74; *cf.* Appendix XII).
[110] Compare with Japanese Law of April 8, 1921 (3 yrs. of compulsory labor and a fine of 3,000 yen); Italian Law of Aug. 20, 1923 (imprisonment up to 10 yrs. and a fine of 3,000 lire); and Bulgarian Law of July 23, 1925 (imprisonment up to 2 yrs. and a fine of 100,000 leva).
[111] *Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1921, p. 50.

was no special evidence in the records of Soviet practice to show that the Soviet Union recognized the air as part of the State domain, the language of its Air Code of 1932, as well as its international practice, prove that the air was added by the communist authorities to their land and waters as an area over which the sovereignty of the Soviet Union extends.

mmary Whatever the contentions of Marxists in academic discussion that the state is merely an abstract manifestation of class struggle, clothed in the Régime of the Dictatorship of the Proletariat, and that territory is to lose all significance as an essential of a state when the class-less commonwealth is established, so far the attitude of the Soviets towards the importance of territory in international law is in agreement with the attitude of non-communist states. Both in their legislation and in their international intercourse the Soviets have proved that the principles of international law relative to the state domain, be it land, water, or air space, are fully recognized and almost without exception followed by the communist authorities.

To argue that this is only a temporary concession, and that actually there is no inconsistency between the communist conception of the state and the actual practice of the Soviets carries but little conviction. It is true that Marx said that there was no *fatherland* for the toiling masses. It may be true also that with the October Revolution of 1917, the "toiling" masses in Russia at last founded for themselves a "socialist *fatherland*" which, theoretically at least, is free of all bourgeois characteristics, such as nationalistic sentiment or territorial limitations. This fact remains, however,—the proletariat in the Soviet Union has to defend its newly acquired *fatherland* against its class enemies.[112] This in its turn suggests that territory, prior to ultimately losing its value upon the realization of the class-less commonwealth, is bound to play a very important rôle during the transition period of the Dictatorship of the Proletariat. As a matter of fact, the attitude of the Soviets towards the problems of

[112] Art. 19 of the Constitution of the R.S.F.S.R. of 1918 reads: "In order to safeguard in every possible way the conquests of the great workers' and peasants' revolution, the R.S.F.S.R. declares it the duty of all citizens of the Republic to defend the *Socialist fatherland*, and establishes universal military service." (*Sist Sborn. Vazhn. Dekretov*, 1917–1920, p. 3.) (Italics by author.)

state domain is at once revolutionary and conservative. By introducing their theory of "terrestrial gravitation," they place themselves ahead of any contemporary school of international law. By adding the air space to the land and waters comprising their domain, they prove themselves to be well to the front with every phase of progress made by international law. By justifying their international claims in certain instances by reference to old agreements and general rules of international law, they admit that there are legal principles which are binding upon the Soviet Régime, even if in disagreement with their political philosophies.

Chapter V

PERSONS

I NATIONALITY AND CITIZENSHIP

General Principle

In international law, the term "persons" includes natural and juristic persons. Since the problems involving the latter are largely within the province of private international law, only natural persons will be dealt with in the present study. The problems connected with natural persons in international law may be divided into two main groups. One relates to nationality and citizenship, the other to the status and legal capacity of foreigners.

Nationals

To avoid the confusion which the term "nationality" may engender, the distinction between its two meanings must be made clear. On the one hand "nationality" often refers to an ethnographic phenomenon, while on the other it implies a social-political relation between a state and an individual.

Although there is no direct statement to this effect, it is apparent that the social-political aspect of the problem of nationality is much more important for the Soviets than its ethnographic. Indeed in communist political philosophy, the struggle of oppressed nationalities for emancipation is linked up with the larger issue of the promotion of socialism. In Marxian literature ethnic groups are considered primarily as essential factors in the economic, social, and political reconstruction of human society. Lenin translated the whole Marxian theory of the problem of nationality into the doctrine of self-determination, a cardinal article of Lenin's faith. The political characteristics of this doctrine are clearly seen in the statement which he made advocating self-determination as an extreme gesture of opposition to national oppression:

"Just as mankind can realize the abolition of classes only through the transitional period of the dictatorship of the oppressed class, so mankind can realize the inevitable *fusion of nations only through the*

period of complete emancipation of all the oppressed nations, i.e., *self-determination*." [1]

The practical application of this doctrine under the Régime of the Dictatorship of the Proletariat, suggests that the Soviet Union, besides being a federation of states, may also be regarded as an agglomeration of peoples, of various nationalities. Among the principles to which the Council of Peoples' Commissaries pledged itself in the Declaration of Rights of the Peoples of Russia, of November 2, 1917, were:

"3. The abolition of all national and national-religious privileges and restrictions.

"4. The free development of the national minorities and ethnic groups inhabiting Russia." [2]

The actual development of the situation under the Soviets, however, soon proved that the nationalities under the Communist Régime, so various in physical type, economic status and cultural tradition, were free to enjoy their new rights and to realize their separate potentialities only so long as they were loyal to the new social order. The fact that the right of the peoples of Russia to free self-determination, "even to the extent of separation and the *formation of independent states*" [3] was operative only in so far as the practical exercise of this principle was compatible with the communist scheme of things, proves that for the Soviet authorities the social-political aspect of "nationality" predominates over its ethnic significance. Inasmuch as the Soviets have followed the Marxian doctrine of nationality, and since international law is concerned only with the political aspects of the social order of mankind, in the present study "nationality" is dealt with only in its political aspect. As such it may be taken as synonymous with the more familiar term "citizenship" in the broader sense, indicating attachment to a state without necessarily involving the right to exercise civil or political functions, and, *vice versa*, without emphasizing the duty of the state to afford protection to the individuals comprising its body politic. To quote from the

[1] Lenin, *Sobr. Soch*, XIX, p 72.
[2] *Sobr Uzak. i Rasp. R.S.F.R.*, 1917–1918, p. 21.
[3] Par. 2 of the Declaration of Rights (*ibid.*, 1917–1918, p. 21).

Draft Convention on the Law of Nationality of the Harvard Research in International Law:

"Article 1. As the terms are used in this convention,
(*a*) 'nationality' is the status of a natural person who is attached to a state by the tie of allegiance;
(*b*) a 'national' of a state is a natural person attached to that state by the tie of allegiance. . . ."[4]

Citizens

It is upon this concept of allegiance that the distinction between a "national" (*i.e.*, citizen) and a "foreigner" rests. To avoid confusion from the rather inconsistent use of these terms in the materials on which this study is based, the communist understanding of them must be pointed out. Prior to the formation of the Union, the citizenship of the peoples in the Soviet Republics was determined by legislative acts and by treaties and agreements entered into by these Republics,[5] in accordance with which Soviet citizenship was imposed upon those former Russian "subjects" who were not exempt in conformity with these acts or treaties. Upon the formation of the Union, the question was first regulated by the Statute on Union Citizenship of October 29, 1924, then by a similar Statute of June 13, 1930, and finally by the Statute on Citizenship of the U.S.S.R. of April 22, 1931, which superseded the former two and is the Soviet law on Citizenship in force at the present.[6] The first article of each of these Statutes provides that for the peoples of the Soviet Republics there is established a common union citizenship. It is this union citizenship which is important from the point of view of international law. In fact there is today no citizenship of individual

[4] Research in International Law, Harvard Law School. *Nationality, Responsibility of States, Territorial Waters* (Drafts of Conventions prepared in anticipation of the first conference on the Codification of International Law, The Hague, 1930), p. 22.

[5] *Cf* Decree of Central Executive Committee of 1918 (*Sobr Uzak i Rasp. R.S.F.S.R.*, 1918, pp. 381–382); Decree of Council of Peoples' Commissaries, Aug 22, 1921 (*ibid.*, 1921, pp. 544–7) See also the Treaties concluded by the Soviet Republics with the Baltic States, Finland, Poland, and Near Eastern states prior to the formation of the Union in 1923. A separate group of laws relates to the citizenship of persons residing abroad who left Russia shortly before the Revolution or during the Civil War and intervention. These laws are analyzed in this chapter in connection with the principles of option and repatriation.

[6] *Sobr Zak. i Rasp S S S R.*, 1924, I, p 364; *ibid*, 1930, I, pp. 626–27, and *ibid.*, 1931, I, pp. 342–344, respectively. For text of the Statute of 1931, see Appendix V.

Soviet Republics which does not carry with it also the citizenship of the Union.

Foreigners

Prior to the formation of the Union in 1923 the definition of the term "foreigner" in the Soviet Republics was explicit. Thus, Article 1 of the Statute on Foreigners in the White Russian S.S.R. reads:

"As foreigners are to be regarded all persons in the White Russian S.S R. who are not citizens of the White Russian S.S.R. or of any other Soviet Republic." [7]

Exactly the same wording is found in Article 1 of the Ukrainian Statute on Foreigners.[8] These laws thus exclude the possibility of regarding as foreigners persons who have not divested themselves of their Soviet citizenship although at the same time entitled to claim citizenship of another state. After the formation of the Union, the interpretation of the term "foreigner" could be deduced only from the wording of Article 3 of the Statute on Union Citizenship of 1931:

"*Every person in the territory of the Union of* S.S.R. *is considered* a citizen of the Union of S.S R. in so far as there is no proof of his being a citizen of a foreign state." [9]

Since there is no evidence that the provision of Article 3 of the Statute of 1931 supersedes the earlier laws, the conclusion is that the present Soviet conception of "foreigners" combines two elements: persons not Soviet citizens, and persons citizens of foreign states.

Despite the wording of the law, as a practical matter, persons who claim foreign citizenship without being able to prove it have been subjected to somewhat inconsistent treatment. Thus, in 1924, such persons were relieved from the military service required of Soviet citizens; on the other hand, the fees for visas in case such persons wished to leave the Soviet Union were those charged to Soviet citizens.[10]

[7] *Sobr Uzak. i Rasp B S.S.R*, 1922, par. 148
[8] *Sobr. Uzak i Rasp S S R.Uk*, 1924, par. 237
[9] *As cited, supra*, p. 82. It repeats Arts. 3 of the Statutes of 1924 and of 1930
[10] Egor'ev and others, *Zakonodatel'stvo i Mezhdunarodnye Dogovory Soiusa i Soiuznykh Respublik o pravovom polozhenii inostrannykh fizicheskikh i iuridicheskikh lits*, p 12. Such persons were provided with "Temporary Certificates for Persons Declaring Themselves Foreigners."

Acquisition of Citizenship

The rules governing the acquisition of nationality depend upon domestic policies, but the resulting problems intrude into the field of international law. For instance, as a result of inconsistencies in national laws, international law has to deal with problems of dual or multiple citizenship, and with the status of those who, enjoying no citizenship, are known as *heimatlos*.

Automatic

There are two methods of acquiring citizenship. One may be called automatic, by virtue of birth, minority, or marriage, and the other voluntary, by virtue of naturalization, or option. As to automatic acquisition of nationality by birth, two principles are recognized: *jus sanguinis* and *jus soli*. These two may appear in combination. The practice of the Soviet Union shows that both the principles of *jus sanguinis* and *jus soli* have been adopted with certain modifications by the Soviet authorities for the determination of Soviet citizenship.

Birth

It is a generally accepted principle that the nationality of a legitimate child is determined by the nationality of the father, and that of an illegitimate child by the nationality of the mother. From the fact that Soviet law makes no distinction between the status of a legitimate and an illegitimate child,[11] and that it places women on an equal footing with men, it follows that the above theory, whereby the nationality of but one parent is a factor in determining the nationality of the child, finds no application in Soviet practice. Soviet laws relative to the nationality of children at birth were very much confused before the formation of the Union. On October 22, 1918, a Decree was passed in the R.S.F.S.R., promulgating the first Soviet Marriage Code, Article 147 of which read as follows:

"When the parents are of different nationalities (one of the parents being a Russian national) the nationality of the child is determined by preliminary agreement between the parents submitted by them at the time of registering their marriage in the Registrar's Office." [12]

[11] *Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1917–1918, p. 943. *Cf.* also Art. 25 of the Code on Marriage, Family and Guardianship of 1927 (*Sobr. Kodeksov R.S.F.S.R.*, 4-e izd., p 633).

[12] The exact title (in translation) is: "Code of Laws on the Recording of Civil Status, [and] of Marriage, Family and Guardianship Laws" (*Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1917–1918, p. 944).

A note to this Article added:

". . . in case no agreement between the parents is reached on this matter, the children are considered Russian nationals, on condition that upon becoming of age they shall have the right to file their intention of acquiring the nationality of the other parent." [13]

According to Article 16 of the Statute on Foreigners in the White-Russian S.S.R. of August 4, 1922,

". . . the nationality of a person born in White Russia of parents who are both foreigners, is determined by the nationality of the parents. If one of the parents is a national of the White-Russian S.S.R., the nationality of the child is determined by agreement between the parents. . . ." [14]

The law of the Ukrainian S.S.R. of March 28, 1922, provides that

". . . all persons born within the territory of the Ukrainian S.S.R., even if their parents are foreign nationals, are considered as Ukrainian nationals, if within one year from the day of their coming of age, as provided for by the Ukrainian laws, they shall not declare their intention to acquire the nationality of their parents, or, in case of different nationalities, the nationality of one of them." [15]

Article 9 of the law of the Far-Eastern Republic [16] of February 27, 1922, reads:

"Children of mixed marriages [*sic*], born within the territory of the Far-Eastern Republic, are citizens of the Far-Eastern Republic." [17]

A comparison of these laws shows that while in the R.S.F.S.R. and the White-Russian S.S.R. the principle of *jus sanguinis* was

[13] Minors become of age at 18 (Circular of the People's Commissariat for Foreign Affairs of May 8, 1922). In Egor'ev and others, *as cited*, p. 14.

[14] *Sobr. Uzak. i Rasp. B.S.S.R*, 1922, par. 148.

[15] *Sobr. Uzak. S.S.R.Uk*, 1922, par 257 That this had no retroactive effect is proved by the case of *Munk*. A certain Munk was born in the Ukrainian S.S.R. of Danish parents prior to the promulgation of the Ukrainian Statute on Foreigners of 1922. The People's Court of the Shepetovka District charged him with evasion of military service The People's Court, 2nd District, Zhitomir, reversed the Decree in a decision of March 18, 1924, declaring that Munk was a foreign citizen and was not liable for military service in the Soviet Army (Egor'ev and others, *as cited*, p. 37).

[16] "Dal'ne Vostochnaya Respublika," better known as D.V R. (author).

[17] Egor'ev and others, *as cited*, p 159. The term "mixed marriage" must be construed in the sense of "parents of different nationalities" (author).

accepted, the Ukrainian S.S.R. and the Far Eastern S.S.R. gave preference to the principle of *jus soli*. Furthermore, these laws show that a quite novel idea, that of determining the nationality of the child by agreement between the parents, was adopted by the communist lawmakers, as a result, no doubt, of the favorable position given to women under the régime of the Dictatorship of the Proletariat.

Later, after the formation of the Union of Socialist Soviet Republics, the laws relative to nationality by virtue of birth were expressed in Article 4 of the Statute on Union Citizenship of October 29, 1924, which read as follows:

"Irrespective of the place of their birth, all persons whose parents are nationals of the Union of S.S.R. are recognized as nationals of the Union Republics and therefore also of the Union of S.S.R.

"As nationals of the Union Republics, and therefore also of the Union of the S.S.R., are recognized all persons one of whose parents was a national of the U.S.S.R. at the moment of their birth, if one of them at the time of the birth was within the territory of the Union of S.S.R.

"The nationality of a person one of whose parents was a national of the Union of S.S.R. at the moment of his birth but both of whose parents at that moment lived outside the territory of the Union of S.S.R. shall be determined by agreement between the parents. Upon coming of age, this person, in any case, has the right to acquire Soviet nationality in a simplified way." [18]

[18] *Sobr. Zak. i Rasp. S.S.S.R.*, 1924, I, p. 364. *Cf* Art. 35 of the Code of Marriage in *Sobr. Kodeksov R.S.F.S.R.*, 4-e izd., p. 634.

The frequent reference to naturalization in a "simplified manner" calls for a brief consideration. There is no explanation to be found in the Soviet law of just what this simplified manner implies. Is the process of naturalization simplified for the person acquiring Soviet citizenship, or is it simplified for the Soviet Government in that the number of instances through which the naturalization process has to go is reduced? A comparison of the various laws on the subject reveals that the power of naturalization is vested with different authorities, the seat of final authority depending on the social standing of the person, his whereabouts and the basis upon which the naturalization is sought.

The simplest process of naturalization provided for in Soviet law is that for foreigners residing in the U.S.S.R. as manual laborers, using no hired help, and for those seeking refuge from political persecution; such persons are admitted to Soviet citizenship by the regional or district executive committees. All other foreigners who are not entitled to the "simplified manner" in virtue of their birth, marriage, or otherwise, residing in the U.S.S.R., and desiring to become Soviet citizens, are naturalized by the Central Executive Committees of the Soviet Republics in which they reside. Admission to Soviet citizenship of foreigners residing abroad to whom the simplified method is not extended is effected through diplomatic and consular offices by special decrees of the Central Executive Committees of the Union Republics or of the Central Executive Committee of the U.S.S.R. The same offices are used also for restoration to Soviet citizenship of those who for various reasons have become denaturalized. Since there are no

Thus, in general, the earlier laws of the U.S.S.R. clearly followed the principle of *jus sanguinis* when both parents were Soviet nationals. In case the nationality of the parents differed, one of them, however, being a Russian national, the nationality of the child depended upon the presence in the Soviet Union of one of the parents at the time of the child's birth. To illustrate this: a child born abroad of a mother who was not a Soviet national, was a Soviet national if its father, a Soviet national, at the moment of the child's birth was in the Soviet Union. So, too, a child born abroad of a mother who was a Soviet national, was a Soviet national if its father, although not a Soviet national, was at the moment of the child's birth, in the Soviet Union.

In the Statute of June 13, 1930, on Citizenship of the Union of S.S.R., the principle of *jus sanguinis* was further extended by omitting the requirement that the father be within the Soviet Union if the parents were of different nationalities and the child born abroad. To quote Article 7:

"A person is recognized as a citizen of the U.S.S R. by virtue of his birth when one or both parents at the time of his birth were citizens of the U.S.S.R."

This was incorporated without change in the corresponding Article of the Statute of 1931.[19]

In contradistinction to the laws of the Ukrainian S.S R. and the White-Russian S.S.R.[20] neither the text of the Union Statute of 1924 nor those of 1930 and 1931 contain any mention of the case where the parents of a child born within the territory of the Union are both nationals of foreign states. As there is no evidence that the Statute on Union Citizenship of 1931 superceded the existing laws of the Union Republics, although the criteria of citizenship were not the same, and as it was provided that citizens of each separate Soviet Republic became automat-

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data to show that the actions of the person to be naturalized differ in these various cases, the conclusion is justified that the simplification of naturalization must be understood as affecting the Soviet governmental machinery and not the individual. (For the Instructions outlining the process of naturalization, see Appendix IV. *Cf.* also Arts. 12–16 of the Statute of 1931, Appendix V.)

[19] *Sobr Zak i Rasp S S.S R.*, 1931, I, p. 196 Text in Appendix V.

[20] *Supra*, p. 85

ically also citizens of the Union,[21] it follows that the Soviet laws on nationality as determined by birth are unfortunately confusing.

Minority

The same lack of clarity is also found in the Soviet laws relative to the effect of a change of citizenship of the parents upon the citizenship of their children. Prior to the formation of the Union, the laws of most of the Soviet Republics on this subject followed the provisions of Article 7 of the Decree of the Council of Peoples' Commissaries of the R.S.F.S.R. of August 22, 1921:

"When both parents acquire Russian nationality, the children under eighteen follow the nationality of their parents. In case of differing nationality of the parents, children under fourteen retain their old nationality. Children fourteen years and over have the right to declare their desire to follow the nationality of either of their parents." [22]

No provision is found in the laws of the individual Soviet Republics for cases where both parents cease to be Soviet nationals. To a certain extent this omission may be explained by the fact that in most of the Soviet Republics there was no legal provision relative to the loss of nationality. As to the Ukraine and Georgia, however, this explanation fails, for in these republics renunciation of Soviet citizenship was allowed.

With the formation of the Union, the laws on the subject became more clear. Article 6 of the Statute on Union Citizenship of 1924 reads:

"Change in the nationality of one of the parents, when both have been Soviet nationals and reside within the territory of the Union of S.S.R., does not affect the nationality of their children. In cases where both the parents are Soviet nationals, residing abroad, and one ceases to be a Soviet national, the nationality of the children is determined by agreement between the parents." [23]

[21] Arts. 1 of the Union Statutes on Soviet Citizenship of 1924, 1930, and 1931 (*supra*, p. 86). *Cf.* also Art. 7 of the Constitution of the USSR (in Appendix I).

[22] *Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1921, p 546. *Cf.* also: Decree of Council of Peoples' Commissaries of the White-Russian S.S.R. of July 11, 1921; Decree of Council of Peoples' Commissaries of Azerbeidzhan S.S.R. of 1923, No 17; Decree of Central Executive Committee of the Ukrainian S.S.R. of March 28, 1922 (Egor'ev and others, *Pravovoe Polozhenie Grazhdan i Juridicheskikh Lits S.S.S.R. za Granitsei*, p. 18).

[23] *Sobr. Zak i Rasp. S.S.S.R.*, 1924, I, p. 364.

Note 1 to this Article provides that when both parents by changing their nationality become Soviet citizens, or, *vice versa*, cease to be such, the nationality of the children under fourteen follows that of their parents. The situation of minors who have lost their Soviet citizenship because both their parents have acquired foreign citizenship, and who wish to be restored to Soviet citizenship, is covered by Note 2 to this Article:

"Persons who in virtue of their parents becoming foreign citizens lose their Soviet citizenship, have the right to be restored to the citizenship of the U.S.S.R. by filing a declaration with the regional or district executive committees, and in the autonomous republics where no division into regions exists, with the central executive committees of these republics."

In addition to this, a Decree of the Central Executive Committee of the U.S.S.R. of March 21, 1928, contains a provision that children of Soviet citizens, when adopted by nationals of foreign states, remain citizens of the U.S.S.R. until the day of their becoming of age, at which time their renunciation of Soviet allegiance may follow in a simplified manner.[24]

The Statutes of 1920 and 1931 in general followed the same principles. Articles 9 and 11 of the latter, which reproduce *verbatim* the provisions of the corresponding articles of the former, read as follows:

"9. In cases where both parents change their nationality, both becoming citizens of the U.S.S.R. or *vice versa*, both ceasing to be such, the nationality of their children under 14 changes correspondingly. . . .

"11. Children of citizens of the U.S S.R. adopted by foreign citizens retain the citizenship of the U.S.S.R." [25]

Thus the All-Union law provides for the nationality of minors both upon the acquisition of Soviet citizenship by foreigners and, *vice versa*, upon the loss of Soviet citizenship by Soviet nationals. When both parents change their nationality simultaneously, the principle enunciated in the laws of the individual Soviet republics prior to 1923 is followed, except that the age of children following

[24] *Sobr. Zak. i Rasp. S.S.S.R.*, 1928, I, p. 357.
[25] For the full text, see Appendix V.

the nationality of the parents is reduced from eighteen to fourteen years. In the instances where both parents are Soviet citizens and one changes his or her nationality, the nationality of the children depends upon the domicile of the parents, whether they live in the U.S.S.R. or abroad. In the first case the children remain Soviet nationals, and in the second case their nationality is decided by agreement between the parents.[26]

Even the All-Union laws on the subject are not worked out in sufficient detail. Thus neither in the Statute of 1924, nor in those of 1930 or 1931 is any mention made of instances where both parents are originally Soviet nationals, one residing in the U.S.S.R. and the other abroad, one of whom changes his or her nationality. Nor is any reference made to cases where one only of the foreign parents acquires Soviet nationality. Thus, also in respect to the influence of the change of nationality by parents upon that of their children Soviet laws are inconclusive.

Marriage

So much for the automatic change of nationality by change in nationality of the parents. Formerly marriage constituted another method of automatic change of citizenship. It used to be the general rule that a woman marrying a foreigner automatically lost her old citizenship and acquired that of her husband.[27] After the World War, laws were enacted in some countries tending towards greater emancipation of married women, with the result that the laws governing the nationality of married women today are very confusing. There is, however, a marked tendency towards a uniform rule by which a woman marrying an alien shall retain the nationality which she possessed before marriage, unless she prefers to become a national of the state of which her husband is a national (provided that the laws of that state consent to such a change).

Credit for introducing this idea belongs to the Soviets. The adherence to the communist principle of the social and political equality of every individual, irrespective of sex, made it impossible for them to sanction the old principle entailing a discrim-

[26] *Cf* Article 36 of the Code on Marriage, Family, and Guardianship, in *Sobr. Kodeksov R.S.F.S.R.*, 4-e izd., p. 634.

[27] Exceptionally, the husband acquired the citizenship of his native wife, as is still the case according to the laws of Brazil, Uruguay and Japan.

ination against women. Indeed, as early as October 22, 1918, a Decree was passed by the Central Executive Committee of the R.S.F.S.R. promulgating the Soviet Marriage Code, Article 103 of which states:

". . . if the parties are nationals of different countries (one being a Russian citizen) change of citizenship may take place only upon an expressed wish of the groom or the bride [respectively], and in conformity with general rules." [28]

This provision was amplified in the Circular of the People's Commissariat for the Interior of the R.S.F.S.R. of July 21, 1921, Article 1 of which states:

"In conformity with Article 103 of the Marriage Code, the marriage of parties of different nationalities does not imply any acquisition [by the wife] of the nationality of her husband." [29]

That the Code of 1918 had no retroactive effect, was proved by the Circular of the People's Commissariat for the Interior of the R.S.F.S.R. of September 7, 1921, No. 348, which reads in part:

"In view of the difficulties which often arise in connection with determining the nationality of widows of foreigners, who became foreign nationals by virtue of their marriage, and of widows of Russian citizens, who by virtue of marrying these citizens, have lost their foreign nationality, the People's Commissariat for the Interior, in conformity with Articles 102, 103, and 104 [of the Marriage Code] issues the present instructions for application in the future:

"1. Persons [Women] who married [Russian citizens] before the February Revolution are considered as having lost their foreign nationality, because the marriage laws in force before that Revolution remain unchanged in so far as they have not been modified by pertinent Decrees.

"2. [Women] who became widows prior to promulgation of the Code, thus retain the nationality of their husbands.[30]

Women, formerly foreign nationals, divorced from their husbands after the promulgation of the Code, might declare at the time

[28] *Sist. Sborn. Vazhn Dekretov*, 1917–1920, p. 225 *Cf* Art 36 of the Code of Marriage in *Sobr Kodeksov R.S.F.S.R.*, 4-e izd., p 634

[29] *Sobr Uzak. i Rasp. R.S.F.S.R.*, 1917–1918, p 941

[30] Egor'ev and others, *as cited*, p 39 Similar instructions were issued also by the People's Commissariat for the Interior of the White-Russian S.S.R., Sept. 14, 1921.

of the dissolution of their marriage their desire to be restored to their pre-marital nationality.

Thus, marriage under the Soviets prior to the formation of the Union did not entail a change of nationality by the woman, if there were no expressed consent on her part; it did, however, serve as a basis for a simplified process of naturalization of a foreign women in case such was desired.[81]

In general, these principles remained unchanged when the Union was founded. Article 5 of the Statute on Union Citizenship of 1924 reads:

"When one of the parties to the marriage is a Soviet citizen and the other is a national of another country, each of them retains his nationality. The change of the nationality *of these persons* may then follow in a simplified manner in conformity with the laws of the Union." [82]

This provision clearly corroborates the earlier Soviet laws on the subject, the national status of one of the parties to the marriage not being affected by that of the other party. A certain degree of confusion was caused by a Circular of the People's Commissariat for Foreign Affairs (No. 226, of 1924) which, while stating that marriage was a basis merely for a simplified process of naturalization, referred only to the woman. The expression "of these persons" used in Article 5, quoted above, suggests a wider application of the principle enunciated therein: simplified nationalization for the husband, as well as for the wife.[83]

The Statutes of 1930 and 1931 introduce nothing new in this respect. Article 8 of each provides:

"When a citizen of the U.S.S.R. marries a person who is a foreign citizen, each of them retains his citizenship.

"Change of citizenship when the desire is expressed is allowed to take place in a simplified manner (Art. 16)." [84]

[81] Circular of People's Commissariat for the Interior of July 21, 1921 (*supra*, p. 91). *Cf.* also Art. 3 of the Decree of the Council of Peoples' Commissaries of the Georgian S.S.R of July 11, 1922 (in Egor'ev and others, *as cited*, p. 40).

[82] *Supra*, p. 86. (Italics by author.)

[83] *Cf.* Egor'ev and others, *as cited*, p. 21.

[84] Art 16 of the Statute reads in part: "The acquisition of citizenship of the U.S.S.R and renunciation of the same . . . may take place in a simplified manner, namely:

B. By change of nationality in connection with marriage (Art. 8) . . ."

This wording is very similar to that of Article 103 of the pre-Union Marriage Code of the R.S.F.S.R. of 1918, and leaves unsolved, as did Article 5 of the Federal Statute of 1924, the question as to whether a foreign man marrying a native woman acquires her nationality by the mere fact of registering a desire to do so. Furthermore, neither of these laws throws any light on the question as to whether the simplified "change of nationality" refers only to naturalization of the foreign party to the marriage, or whether it includes also simplified de-naturalization of the party who is a Soviet citizen, and wishes to acquire the foreign nationality of the other party. The expression "change of nationality" used in the Union Statutes as well as in Soviet laws before 1923 logically covers both processes.

Despite the confusion of the Soviet laws on the automatic acquisition of nationality, it is safe to summarize the attitude of the Soviets as follows: In the determination of nationality by birth, the Soviets temporarily introduced a novel conception whereby under certain circumstances the whereabouts of the father at the time of the child's birth was the controlling factor in deciding its nationality. Otherwise they remained conservative and followed the practice of the non-communist states.[35] In regard to the effect of the change of citizenship of the parents upon that of their minor children, Soviet laws are inadequate. The tendency, however, is to follow the general practice of other nations whereby the citizenship of minor children changes with that of the parents. In evaluating the effect of marriage upon citizenship, the Soviets proved pioneers in giving women entering matrimony greater freedom in choosing their political allegiance. By relieving them from the compulsory acquisition of the nationality of their husbands, the Soviets have transferred the acquisi-

[35] For other Soviet laws relative to nationality, see Ordinance No 4 of the Council of Peoples' Commissaries of the Georgian S S R of Feb 5, 1924, Law of the Far-Eastern S S R. of Oct. 3, 1921 (not in force after Nov 14, 1922); Circular of the People's Commissariat for the Interior, No 25, Mar. 1, 1922; Instructions of People's Commissariat for the Interior of the Ukrainian S.S R. of July 6, 1923; Decrees of the Council of Peoples' Commissaries of the White-Russian S S R. of Nov. 11, 1921, and of Aug. 4, 1922, Decree of the Central Executive Committee of the Ukrainian S.S R. of Mar. 28, 1928; Circular of the People's Commissariat for the Interior of the White-Russian S S R. of Aug. 16, 1921, and of the R.S.F.S R of May 12, 1922 (in Egor'ev and others, *as cited*, pp. 39ff.).

tion of nationality by marriage from one of the automatic to one of the voluntary methods, among which are naturalization, option, and repatriation.

Voluntary

The most common of the voluntary means of acquiring citizenship is naturalization. Whereas in a certain sense any change to a nationality other than that with which one is invested at birth may be characterized as naturalization, the methods above referred to are incidental to other and different changes of status.

Naturalization

"Naturalization" in the narrow sense of the term is used to describe a change in national allegiance effected by an individual for the definite purpose of acquiring the citizenship of a specific state, the motive for which may be political, financial, social, etc.

It is as to naturalization in this narrower sense that the practice of the Soviets will be analyzed. The earliest Soviet law relative to acquisition of Soviet nationality by naturalization [86] is the Decree of the Central Executive Committee of the R.S.F.S.R. of April 5, 1918, on "The Acquisition [of the Rights] of Russian Citizenship," Article 1 of which provides:

"Every foreigner residing within the R.S.F.S R. may acquire the rights of Russian citizens." [87]

Article 20 of the Constitution of the R.S.F.S.R., adopted three months later, reads:

"Recognizing the solidarity of the laboring masses of all nations, the R.S.F.S.R. extends all political rights enjoyed by Russian citizens to foreigners working within the territory of the Russian Republic, provided that they belong to the working class or to the peasantry working without hired labor. It authorizes the local Soviets to confer upon such foreigners the rights of Russian citizenship without any difficult formalities." [88]

On December 8, 1921, the People's Commissariat for Foreign Affairs of the R.S.F.S.R. issued Instruction No. 26, Article 7 of which reads:

[86] It is of interest to note that the expression "naturalization" does not appear in the laws quoted. The tenor of these laws, however, leaves no doubt that they refer to this method of acquiring nationality.

[87] *Sobr. Uzak. i Rasp. R.S.F S.R.*, 1917–1918, p. 381.

[88] *Sist. Sborn Vazhn. Dekretov*, 1917–1920, p. 1. This text was reproduced in Article 11 of the Constitution of the Azerbeidzhan S.S.R.

"*a.* If a foreigner, applying for admission to Soviet citizenship, by the laws of his former country does not lose his previous nationality, the said foreigner must attach to his petition [for naturalization] a certificate proving that there is no objection on the part of his government to his becoming a Soviet national." [39]

The Constitution of the Azerbeidzhan S.S.R. followed that of the R.S.F.S.R. by emphasizing in Article 11 a distinction between social classes in extending the right of naturalization to foreigners. The laws of the other Soviet Republics, prior to the formation of the Union, extended the right to all foreigners equally, by legal provisions similar to each other.[40] Thus a Ukrainian law of 1919 provided that all foreigners might be granted Soviet citizenship, as did the Ukrainian Statute on Foreigners of March 28, 1922.[41]

When the Union was formed, the Soviet law on the acquisition of Soviet nationality was at first embodied in the Statute on Union Citizenship of October 29, 1924. It provided for the admission of foreigners to Soviet citizenship, whether they resided in the U.S.S.R. or abroad, and outlined rules for a simplified process of naturalization for foreigners residing in the Soviet Union for the purpose of laboring, for those belonging to the peasantry not using hired labor, and for those seeking refuge because of their social or political activities.

Article 11 adds:

"Foreign nationals admitted to the citizenship of the U.S.S.R. enjoy no rights and have no obligations derived from allegiance to a foreign state." [42]

In 1931 the latest Statute on Citizenship of the Union was promulgated. Its provisions are similar to those of 1924 except

[39] Egor'ev and others, *as cited*, p. 13 *Cf.* the Decree of the Council of Peoples' Commissaries of the R S F S R. of Aug. 22, 1921 (for text, see Appendix IV)

[40] *Cf.* also Decrees of the Council of Peoples' Commissaries of the White-Russian S.S.R. of Nov. 19, 1921, and of Aug. 4, 1922; Decree of the Council of Peoples' Commissaries of the Georgian S S R. of July 14, 1922, No 410; and Circular of the People's Commissariat for the Interior of the R S F S R of Dec. 1, 1921, and of May 12, 1922; Instructions of the Council of Peoples' Commissaries of the Ukrainian S S R of July 6, 1923 (Egor'ev and others, *as cited*, pp. 18ff.).

[41] *Cf.* Art. 6 of the White-Russian Statute on Foreigners; Art. 5 of the Decree of the R.S.F S R. of Apr. 5, 1918, and Art 1 of the Decree of Aug 22, 1921; Art 128 of the Ukrainian Statute on Foreigners; Art. 4 of the Decree of the Georgian S S R of 1922; and Art. 8 of the Far-Eastern S.S R. law of Feb 27, 1922 (Egor'ev and others, *as cited*, p. 9)

[42] *Sobr. Zak. i Rasp., S.S.S.R*, 1924, I, p 365.

that foreign citizens are "admitted to the citizenship of one of the union republics and thereby to the citizenship of the U.S.S.R." [43]

Soviet laws on naturalization differ from the laws of other states in two respects: one is the emphasis on class distinction, as manifested by the simplified process of naturalization for those belonging to the proletariat. The second is in regard to residence. While most non-communist states provide for a definite period of residence or domicile as a prerequisite of naturalization in the usual course, which period varies in different countries from one to ten years,[44] the Soviet laws contain no requirement of such residence whatsoever. It is on this basis that Article 9 of the Statute of 1924 and Articles 14 of those of 1930 and 1931 were possible, according to which foreigners might be admitted to Soviet citizenship without ever having been in the country.[44a]

The second voluntary method of changing nationality follows upon the formation of a new state, or the annexation of part of the territory of another state. In the former case the question of the acquisition of the new nationality rests entirely with the people setting up the new state. In the latter, the annexing state first decides whether or not the people of the added territory are to be accorded the right to become its citizens. If it decides in the negative, no question of a change of nationality arises; if it decides in the affirmative, then, according to a recognized rule of international law the inhabitants of the transferred territory enjoy the right of option to choose whether they will transfer their allegiance to the annexing state, or retain their former nationality, at the expense, it may well be, of removing from that district. To quote Pradier-Fodéré:

"Ordinarily a right to choose the allegiance to either state is left to the inhabitants of an annexed territory. Removal from the new jurisdiction is usually required if the inhabitant does not choose to change his allegiance. If the inhabitant does not take any action, it

[43] Arts. 12, 13 and 16. For text see Appendix V.

[44] A list of the states with the length of residence required is found in the *Research in International Law, Harvard Law School*, pp. 89–91.

[44a] *Sobr. Zak i Rasp S.S.S.R.*, 1924, I, p. 365; *ibid.*, 1930, I, p. 627, and *ibid.*, 1931, I, p. 343, respectively.

is held that he thereby tacitly transfers his allegiance unless there are special treaty provisions." [45]

The principles underlying the exercise of the right of option are somewhat complex. Not only must the members of the native population be assured the right to choose their allegiance, but the new sovereign must accept them as nationals while their former sovereign must provide for their denaturalization. The right of option is usually established by treaty; the details of denaturalization consequent upon the exercise of this right are ordinarily regulated by domestic enactments, as they are not *per se* a concern of international law.

Treaty Provisions

In Soviet practice the principle of the right of option finds application not only to the inhabitants of states newly formed from the old Russian Empire, but to those of annexed territories as well. This is a slight mitigation of the evils of annexation which is *ex principio* contrary to communist philosophy. Moreover, as the establishment of the new states, as well as the agreements entered into by the Soviets in regard to option in the annexed territories, followed upon the World War and the Civil War in Russia, *i.e.*, long before the formation of the Union of Soviet Republics, Soviet treaties in regard to the right of option must be understood to include only those of the separate Soviet Republics.

The first indications of recognition by the Soviets of the right of option are found in the proceedings at Brest-Litovsk in 1918. It is true that the Brest-Litovsk Treaty itself has no provision directly relating to option. However, in Article 10 of the Supplementary Treaty between Germany and the R.S.F.S.R. of August 27, 1918, it was provided that

"With regard to Estonia, Livonia, Courland, and Lithuania, agreements are to be concluded with Russia, as to the following points:

"1. With regard to the nationality of the former Russian inhabitants of these territories, as to which they must in any case be allowed the right to option, and departure." [46]

[45] Pradier-Fodéré, *Traité de Droit International Publique Européan et Américain*, III, pp. 1671ff

[46] *Text of the Russian "Peace"* (Confidential. For official use only. Washington, Government Printing Office, 1918), p. 185.

There are several treaties concluded between the Soviets and Estonia, the Georgian S.S.R., Latvia, Lithuania, and Poland which contain clauses dealing specifically with the problem of option. Those with Estonia are: The Treaty of Peace of February 2, 1920, the Agreement on the Manner of Execution of Option of April 6, 1920, and the Agreement on Refugees of August 19, 1920, all concluded with the R.S.F.S.R. For the present study the most illuminating is the Treaty of Peace. Article 4 provides that

"For one year from the date of the ratification of the present Treaty, persons of non-Estonian origin residing in Estonia and aged eighteen years or over shall have the right to opt for Russian nationality; women and children under eighteen years of age shall follow the nationality of the husband or father, unless there exists between husband and wife any agreement to the contrary. Persons opting for Russia shall leave Estonian territory within one year from the date of such option, but shall retain their rights over their real property and may remove their personal property. Similarly, persons of Estonian origin residing in Russia may opt for Estonian nationality during the same period and under the same conditions. Each of the two Contracting Governments reserves the right of rejecting such options of nationality.

"Note: In the case of persons of doubtful origin, those who are personally registered, or whose parents were registered, in a rural or urban community, or in any 'class' in the territory which now forms the State of Estonia, shall be considered of Estonian origin." [47]

This treaty with Estonia did not give any express definition of Estonian citizens, nor define how such citizenship had been established. The result of this was difficulty in determining who of the inhabitants of Estonia were to be considered eligible to opt for Soviet citizenship. Apparently, persons of Estonian origin residing in Estonia at the time of ratification of the Treaty were considered Estonian citizens and not eligible to opt for Soviet citizenship. So, too, persons of Estonian origin residing at that time in Estonia irrespective of their political allegiance were deprived of that right. A question arose, however, as to persons of non-Estonian origin, formerly Russian (Soviet) citizens [48] re-

[47] *Sborn. Deistv. Dogov.*, I, 1924, pp 196ff, *ibid.*, I, 1921, pp. 163ff.; XI, 30, L.N.T.S.

[48] After the November Revolution of 1917 Estonia continued to remain a part of "Soviet Russia" until the German occupation of the Baltic provinces in

siding in Estonia. Had they become Estonian citizens, too, automatically by the treaty recognizing the independence of Estonia, or had they retained their Russian allegiance? In the first case, having become Estonian subjects, in order to be restored to Russian allegiance they would have had to be given the right of option. In the other case, there would have been no need for option. As to the reverse situation, *i.e.*, the position of Estonians in Russia, there was no difficulty. Persons of Estonian origin who resided in Russia at the time of ratification of the Treaty were not considered to have become *ipso jure* Estonian citizens, but to have the right of option for Estonian citizenship.

Neither of the other Agreements entered into by the R.S.F.S.R. with Estonia corrected this weakness of the Treaty of Peace. Thus the Agreement on Option of April 6, 1920, in Article 1 states that the petitions for option for Estonian citizenship for persons residing in the R.S.F.S.R. were to be filed within one year from the time of ratification of the Treaty of Peace of February 2, 1920. Article 3, which is essentially a reproduction of the provisions of the Treaty of Peace just quoted, gives only a few more details as to how Estonian *origin* is to be proved. Other articles of this Agreement refer to further technicalities by which the option was to be carried out.[49] In the Agreement of August 19, 1920, of interest is Article 3 providing that persons enumerated in Article 1 of that Agreement, who in accordance with Article 4 of the Treaty of Peace had no *right to opt* were to be returned to their respective countries on an equal basis with the others.[50] The preamble to this Agreement, stating that it was to apply to persons who were "in the territory of one

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March, 1918 During these four months the inhabitants of Estonia were legally Soviet citizens Their status during the German occupation and during the struggle between Estonia and the R S F S R for the independence of the former, which lasted until this Treaty of Peace, is difficult to define; the Soviet claim that persons of Russian origin residing in Estonia were Soviet citizens is not entirely unjustified

[49] *Sborn Deistv Dogov*, I, 1921, p 247; XI, 30, L.N.T S

[50] These comprised military and civil prisoners of the World War, hostages, members of families whose heads resided in the territory of the other Contracting Party, refugees, members of the former North-western Anti-Bolshevist Army of General Yudenich who were in Estonia at the time of signing this Agreement, and persons of Estonian origin who had taken part in the Civil War in the ranks of Anti-Bolshevist forces (*ibid*, I, 1921, p. 163).

[either] of the Contracting Parties," in the absence of any further explanation, permits the conclusion that the provision of Article 3 of this Agreement referred both to persons who resided in Estonia having no right to opt for Soviet citizenship, and those residing in the R.S.F.S.R. having no right to opt for Estonian citizenship. Aside from this, this Agreement serves as a supplementary provision to the Treaty of Peace, stating who were definitely deprived of the right of option, which provision was omitted in that treaty itself.

Most similar to this Estonian treaty as regards the principle of option are the Treaty of Peace concluded between the R.S.F.S.R. and the Georgian Republic on May 7, 1920, and the Agreement on the Manner of Option for Georgian Nationality signed on December 9, 1920.[51] Article 9 of the former provides that persons of Georgian race residing in Russia may opt for Georgian nationality, and persons of non-Georgian race residing within Georgia may opt for Russians nationality. Article 2 of the latter says that the right of option is given not only to all persons of Georgian race but to all other persons born in Georgia, irrespective of their race, provided that they or their parents were domiciled within Georgian territory prior to August 1, 1914.

The Soviet treaties with Latvia touching upon option are: the Treaty regarding Repatriation of Refugees, of June 13, 1920; [52] the Treaty of Peace with the R.S.F.S.R., of August 11, 1920; the Agreement Regarding Option, Citizenship, Repatriation, Removal and Liquidation of Personal Property of the Citizens of both Contracting Parties, of July 22, 1921, and two agreements signed on November 6, 1921, constituting respectively the second and third parts of the Agreement of July 22, 1921.[53] Compared with the Treaties with Estonia, those with Latvia are more illuminating, for in contradistinction to the former they define Latvian citizens, thus preventing any possible confusion. Article 8 of the Treaty of Peace reads:

[51] *Sborn. Deistv Dogov, R.S.F.S.R.*, I, 1921, pp. 27–33 and 135–138 respectively.

[52] *Ibid*, I, 1921, pp. 143ff. *Cf.* FN 55, *infra*, p. 102.

[53] *Ibid*, I, 1924, pp. 75ff., *ibid*, II, 1921, pp. 98ff., *ibid.*, III, 1922, pp. 84ff, and *ibid*, III, 1922, pp. 88ff, respectively; II, 196, L.N.T.S., and XVII, 252, L.N.T.S. for the first and second agreements, respectively.

"Persons residing, on the day of the ratification of the Treaty, within the frontiers of Latvia, and likewise refugees residing in Russia, who were registered, or whose parents were registered, before August 1st, 1914, in urban, rural or corporate societies, in the territory now forming the State of Latvia, are recognized as Latvian citizens.

"Persons of the same category residing at the moment of ratification of this present Treaty within the frontiers of Russia, with the exception of the refugees above-mentioned, are recognized as Russian citizens.

"Nevertheless, any person of the age of 18 years and above, residing in Latvian territory, has the right during one year, dating from the day of the ratification of the present Treaty, to declare that he does not desire to retain his Latvian nationality and to opt in favor of Russia; and in this case children of less than 18 years of age, and wives, acquire the latter nationality, unless an agreement to the contrary has been concluded between the married couple.

"Likewise, Russian citizens can, under the terms of the second paragraph of this clause, during the same period of time and under the same conditions, opt for the status of Latvian citizens.

"Those who have made a declaration of option, and likewise those of their family to whom the nationality is transmitted, retain their rights to their movable property and real estate within the limits of the laws in force in the State which they inhabit, and in case of departure they have the right to liquidate or carry away whatever belongs to them.

"Note (1). Persons living at the time of the ratification of this Treaty in the territory of a third State, who are not naturalized and who fall within the provisions of the first paragraph of this article, are also recognized as citizens of Latvia, but preserve the right, under the conditions laid down, of opting for Russian nationality.

"Note (2). Persons who, before or during the world-war of 1914–1917, were living in the territory of one of the Parties, and who at the time of the ratification of this Treaty are living in the territory of the other Party, shall also enjoy the rights granted under this Article to persons exercising the right of option.

"Refugees who may have been able to remove their property in virtue of the Agreement of June 12, 1920, regarding the repatriation of refugees, shall enjoy the rights laid down in the Article dealing with optants, subject to proof that such property belongs to them, and was actually in their possession at the time of repatriation.

"Note (3). Each of the two Contracting Parties shall grant to citizens of the other Party, in the same way as to optants, permission and facilities for returning freely to their own country, and generally for leaving the territory of the State of the other Party. In the same way, each of the two Contracting Parties undertakes to demobilize

the citizens of the other Party immediately after the ratification of the present Treaty."

Article 2 of the Agreement of November 6, 1921,[54] constituting the first supplement to the Agreement of July 22, 1921, gave a definition of Latvian and Russian citizens very similar to that found in the above treaty. These definitions in the treaties with Latvia avoid the confusion resulting from the corresponding treaties with Estonia. Indeed, no question arises as to option for Latvian citizenship by persons of Latvian origin—refugees—residing in Russia, for, in accordance with clause 1 of Article 8 they were recognized as already Latvian citizens. So, too, there was no need for persons of Russian origin residing in Latvia to opt for Russian [Soviet] citizenship, for under the provision of this same clause they were not considered Latvian citizens, and so presumably were regarded as Soviet citizens. Evidently the right of option in this Article 8 was extended to: (1) those persons of Latvian origin residing in Russia, who, not being refugees, were not considered as Latvian citizens, and who expressed their desire to renounce their Soviet allegiance and to acquire Latvian; (2) those Latvians who resided in Latvia and were declared Latvian citizens by clause 1 and who wished to acquire Russian nationality.

There are two noticeable omissions. This Treaty does not directly extend the right to opt for Russian nationality to Latvian refugees in Russia who had left Latvia during the War, but who, in conformity with the above-quoted provision of the Treaty, are considered as Latvian citizens.[55] Nor is there any provision according the right of option for Latvian citizenship to persons of Russian origin, residing at the time in Latvia and not considered Latvian citizens under clause 1, but who wished to stay there

[54] *Sborn. Deistv. Dogov.*, III, 1922, p. 85, XVII, 252, L.N.T.S.

[55] *Ibid.*, I, 1922, p. 40. A special preliminary agreement defining the meaning of the term "refugees," and outlining their treatment, is found in the Soviet-Latvian Treaty of June 30, 1920 (*ibid*, pp. 143–147). The actual date of this Treaty is confusing: in the official collection *Sborn. Deistv. Dogov., R.S.F.S.R*, I, on p. 143 it is said "Concluded in Moscow, June 30, 1920." On p. 147 it is said: "Done in two copies. Moscow, June 13, 1920." In the index it mentions "June 20, 1920," while in the text of Article 9 of the Treaty of Aug 11, 1920, it reads: "Treaty on refugees concluded with Latvia on June 12 inst." (Author)

and to acquire Latvian allegiance. It is only by deduction from the wording of Article 9 on refugees that the conclusion may be reached that the right to opt for Soviet citizenship was extended to Latvian refugees in the R.S.F.S.R., and for Latvian citizenship to those who fled from the Soviet régime to Latvia, and who, at the time, constituted the main bulk of the Russians just referred to:

"The Agreement as to the repatriation of refugees, concluded between Russia and Latvia on June 12th of the current year, shall remain in force with the following addition: refugees of both Parties shall, in addition to the rights granted to them under the above-mentioned Agreement, enjoy the rights conferred by the Present Treaty of Peace on citizens and optants of the Party concerned." [56]

Helpful as it was, this provision did not grant the right to opt for Latvian citizenship to those Russian nationals who resided in Latvia, but were not considered refugees from the Soviet régime.

There were also several treaties concluded between the Soviets and Lithuania touching upon the problem of acquisition of nationality by option: the Treaty of Peace with the R.S.F.S.R. of July 12, 1920; the Agreement with the R.S.F.S.R. on the Manner of Option for Lithuanian Citizenship of June 28, 1921; a similar agreement with the Ukrainian S.S.R. of January 28, 1921; and an agreement with the Ukrainian S.S.R. on Provisional Rules regulating the Transportation of the Property of Persons who have opted for Lithuanian Citizenship, of April 5, 1922.[57] The most important for the present study is the Treaty of Peace of July 12, 1920. The provisions contained in Article 6 relative to option in general are very similar to those of the Treaty of Peace with Latvia. The definition of Lithuanian citizenship is given, though its application is narrowed: not every person residing in Lithuania at the time of ratification of the Treaty of Peace was to be considered a Lithuanian citizen, but only those who were eligible for registry in rural, urban or corporate so-

[56] *Sborn Deistv. Dogov*, I, 1924, p 80 On the date "June 12th" *cf.* FN 55, *supra*, p. 102.

[57] *Ibid*, I, 1922, pp 50ff, *ibid.*, II, 1921, pp. 102ff., *ibid*, I, 1924, pp. 256ff, and *ibid.*, I, 1924, pp. 262ff.

cieties; or who themselves or whose parents permanently resided in Lithuania, or, finally, those who for ten years prior to 1914 had lived in Lithuania. Compared, however, with the Treaty with Latvia, this one is more explicit in stipulating that the principle of domicile was not applicable to persons of the last group of non-Lithuanian origin who had resided in Lithuania in the service of the Russian Crown. Such persons were not to be regarded as Lithuanian citizens. Another difference is that the Treaty with Lithuania, in speaking of persons who formerly lived in Lithuania and at the time of the ratification of the Treaty were in Russia, bases the exercise of the right of option upon their desire to *retain* Russian nationality, whereas the Treaty with Latvia speaks of persons who desire "to renounce their Latvian nationality and to opt for Russian nationality."

The treaty of the R.S.F.S.R. with Poland of March 18, 1921, is still more illuminating, although, like the Treaty with Estonia, it does not give any definition of those who are to be considered Polish citizens.[58] In brief, according to this treaty, all former Russian subjects (evidently those of non-Polish origin) who nevertheless are eligible for registry with the rural, municipal or corporate bodies in the territory of Poland, or whose names have been entered in census books as permanent residents of Poland, and who "are" in the territory of Poland, have the right to opt for Soviet citizenship. All former Russian subjects of non-Polish origin who do not fall within these categories "do not need to file petitions for option," for they continue to be Russian nationals. Likewise the right of option for Polish nationality by persons residing in Russia was given to persons who either were eligible for registry in the rural, municipal or corporate bodies in the territory of Poland, or whose names were in the census books, or who were descendants of those who fought for the freedom of Poland. Comparing this treaty with those concluded with Estonia, Latvia and Lithuania, one notices that in the Treaty with Estonia emphasis was laid on domicile, in that with Latvia on a combination of domicile and registry, and in the Treaty with Lithuania on origin, while here registry in corporate bodies and in census books seems to be of prime importance.

[58] For the text of Article 6 on Option, see Appendix II.

So much for the principle of option in the Soviet treaties applicable to the formation of new states. There are two treaties of the Soviets where the principle of option is applied where a territory is annexed to another state, although the annexation was not undertaken by the Soviets, for communist philosophy is opposed to this principle. These are the Treaty with Finland of October 14, 1920,[59] and with Turkey of March 16, 1921.[60] In both these treaties the right of option is based upon the mere fact of cession. Article 9 of the Treaty with Finland states that "persons of Russian nationality having their domicile in the region of Pechenga without any further formalities are considered Finnish citizens, provided that persons of eighteen years of age [and over] shall have the right to opt for Russian citizenship within one year from the date of the coming into force of this Treaty."[61] Furthermore, according to Article 11, the inhabitants of two of the rural districts in Eastern Karelia were given the right of free emigration to Finland. Provisions of a similar nature concerning the right of option are found in the Treaty with Turkey.

All Soviet treaties, with the exception of that with Turkey,[62] grant the right of option to persons who have reached the age of eighteen. Children under eighteen follow the nationality of the father.[63] As to married women, the treaties with Estonia, Latvia, Lithuania and Finland provide that the wife follows the nationality of her husband, unless it is otherwise agreed between them. It may be noted here that this also is in conformity with the present Soviet Marriage Code.[64] In the treaties between the R.S.F.S.R. and Georgia, the Baltic States, and Poland, married women were given an independent right of option. According to the first, the

[59] *Sborn Deistv Dogov*, I, 1924, pp. 171–183, III, 6, L N T S

[60] *Ibid*, I, 1924, pp. 155–171

[61] *Ibid*, I, 1924, p 175; III, 6, L N T.S Actually the issue of nationality in Finland offered no great problem, because by the constitutional laws of the Russian Empire, Finland had enjoyed partial autonomy with special privileges and rights for her Finnish inhabitants.

[62] *This Treaty contains no provision as to age limit*

[63] This rule is reflected in the provisions of Art 7 of the Civil Code of the R S F S.R. of 1926 (*Sobr. Kodeksov R S.F S R.*, 4-e izd, p 416). (Prior to the new Civil Code of 1922, Art 149 of the old Code of 1918 on Marriage established sixteen as the age of majority for women.) *Cf* also Art. 2 of the Treaty between Latvia and the R S F.S.R. of Nov 6, 1921 (*Sborn. Deistv Dogov.*, I, 1924, p 238, XVII, 252, L N T S.)

[64] *Sobr Kodeksov R S F S R*, 4-e izd., p. 631

right of option is extended also to the widows of persons of Georgian origin.[65]

Most of the treaties require documentary evidence of the eligibility of persons to opt, but the treaties of the R.S.F.S.R. with Georgia and Lithuania, in extraordinary cases, when no documents are available, grant the right of option on the basis of "racial characteristics," the consent of the Commissariat for Nationalities of the R.S.F.S.R. being necessary.[66]

Although removal from the state allegiance to which has been renounced by option is uniformly stipulated in all the international agreements concluded by the Soviets touching upon the issue, the degree of emphasis upon it varies greatly. Thus Article 4 of the Treaty with Estonia provides that persons opting for foreign nationality *must* leave the country; Article 6 of the Treaty with Poland provides that the governments *may require* that such persons leave the country, while Article 12 of the Treaty with Turkey formulates the whole problem of option in the following provision:

"Every inhabitant of the territories which prior to 1918 were part of Russia and which by the Government of the R.S.F.S.R. are now recognized as being under the sovereignty of Turkey, in conformity with the present Treaty, *has the right* to leave Turkey freely and take with him his personal property or [money equal to] its value. A similar right is extended to the inhabitants of the Batum territory, sovereignty over which is transferred by the present Treaty from Turkey to Georgia."

In this connection it may be said that many former Russian citizens who by option became citizens of the newly formed independent republics failed to leave Russia within the time limit granted to them. On August 29, 1921, a Decree was passed by the Council of Peoples' Commissaries by which these "foreigners" were required to leave the territory of the Soviet Union:

"3. Persons who in virtue of international agreements of the R.S.F.S.R. have opted for foreign citizenship and who were to have left the territory of the Republic within a given period of time, may stay on in the R.S.F.S.R. after the expiration of such time only upon

[65] *Sborn Deistv. Dogov.*, I, 1921, pp. 135ff.
[66] *Ibid*, I, 1921, p. 136, and II, 1921, p. 103, respectively.

special permission of the People's Commissariat for the Interior. . . .

"Note 2. Persons who have not left . . . and have not filed a petition for the restitution of their Soviet citizenship are to be expatriated from the R.S.F.S.R. in accordance with the present Decree." [67]

The result was that many such foreigners expressed the desire to withdraw their original petitions for change of nationality and to be restored to Soviet citizenship.

Besides providing for a choice of nationality, most of these treaties also outlined the formalties of the proceedings by which the change of political allegiance by option was to be affected. As shown, native origin, or registry in local communities; residence in the place of filing application at the time the treaty comes into force; an age limit of eighteen years or over; and departure from the country whose citizenship was being renounced, were essential in renouncing one nationality and opting for another. The procedure usually consisted of filing a petition with the People's Commissariat for the Interior of the respective Soviet Republic, attaching the necessary documents to prove that the petitioner was entitled to the right of option. A similar petition was to be filed with the respective Diplomatic Representative. Upon the examination of the petition, the documents being found in due form and adequate, and provided that there was no objection on the part of the authorities either of the Soviet Republic or of the receiving state, the petitioner was considered as having lost Soviet nationality, the formal evidence of this renunciation being a "Certificate of Option." This certificate was issued by the People's Commissariat for the Interior, and from the time of its issue, the person was regarded by the Soviet authorities as a foreigner, and had no right to withdraw his petition. In case such a person wanted to become a Soviet citizen again, he had to follow the general routine prescribed for the naturalization of foreigners.[68]

Domestic Enactments

With the right of option established by treaty, the parties to the latter are still faced with problems of domestic law regarding

[67] *Sobr Uzak. i Rasp R S F S R*, 1921, p. 555.

[68] See Kishkin, *Sovetskoe Grazhdanstvo*, Moskva, 1925 Also, Krylov, "Optatsia i Plebistsit i Nachalo Samoopredelenua v Sovetskikh Mezhdunarodnykh Dogovorakh," *Sovetskoe Pravo*, 1923, II, pp 43–45.

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naturalization and denaturalization. As to the former, the *obligation* to admit to citizenship is usually assumed in the treaty itself. Most of the treaties outlined above provide that the Contracting Parties shall not refuse to admit to their citizenship those who by the exercise of the right of option express their desire to become citizens, provided they comply with all the requirements. The only exception to this rule is found in the Treaty between the R.S.F.S.R. and Estonia of February 2, 1920, in which it is said that each of the Contracting Parties reserves the right of rejecting such options of nationality. The method of admitting to citizenship may follow the general rules regarding naturalization, or special decrees may be issued. In conformity with the treaties on option entered into by the various Soviet Republics, decrees and administrative ordinances were issued. Some of these decrees extended this right only to the nationals of the specified states, while others referred to "foreigners," whether nationals of other Soviet republics or of states outside the Soviet Union. Article 2 of the Ukrainian Decree of March 11, 1919, on the Acquisition of Ukrainian Citizenship, provided that the right of naturalization was extended to "former subjects of the Ukrainian Empire" residing abroad.[69]

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The grant of facilities for the renunciation of citizenship is likewise implicit in Soviet national laws providing for option. Inconformity with the provisions of the Brest-Litovsk Treaty, which provided that the inhabitants of the Baltic States should have the right to opt for the citizenship of these respective states or for Soviet citizenship, the Council of Peoples' Commissaries of the R.S.F.S.R. on July 2, 1918, issued a Decree on Denaturalization of Russian citizens in the territories of the former Russian Empire as to which the Soviets had renounced all claims to sovereignty in the Brest-Litovsk Treaty.[70]

Article 1 of the Ukrainian Decree of March 11, 1919, on Renunciation of Citizenship reads:

"All former subjects of the Ukrainian State, and all former subjects of the territories of the Russian Empire which at present have seceded from Russia because of political change, residing within the Ukrainian

[69] *Sobr. Uzak. i Rasp. R K P.Uk.*, 1919, p. 350.
[70] *Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1917–1918, p. 595.

Socialist Soviet Republic, are recognized as Ukrainian citizens until they renounce [their Ukrainian citizenship]." [71]

Article 2 of the same Decree stipulated that applications for renunciation of Ukrainian citizenship could be filed by persons over seventeen years of age within two months of the date of publication of the Decree. The enumeration of the documents to be submitted shows that this right of renunciation was extended only to persons of non-Ukrainian origin, and under condition that there was consent of some other state to admit such persons to its citizenship.

Article 10 of the Constitution of the Far-Eastern Soviet Republic (D.V.R.) of April 27, 1920, provided that all persons born in the former Russian Empire and residing in the Far-Eastern S.S.R. (D.V.R.) [72] had the right of divesting themselves of Far-Eastern Soviet (D.V.R.) citizenship by option in case they wished to become nationals of one of the other republics formed in the territory of the former Russian Empire; a period of six months was given for exercising this right. Those who resided in the "territory of the Eastern-Chinese Railway" [73] had the right to renounce their allegiance to the Far-Eastern S.S.R (D.V.R.) in favor of any foreign country When in 1923 the Far-Eastern S.S.R. was united with the R.S.F.S.R.,[74] persons who by virtue of action under Article 10 of the Far-Eastern S.S.R. (D.V.R.) Constitution had become citizens of foreign states (other than the R.S.F.S.R.) continued to be considered foreigners. Article 1 of the Circular of the People's Commissariat for the Interior of the R.S.F.S.R. of December 3, 1923, reads:

"National passports issued in the territory of the former D.V.R. by the consuls of Latvia, Lithuania, Poland, and Estonia, recognized by the authorities of the D.V.R. prior to November 15, 1922, are sufficient to evidence their bearers as foreigners." [75]

A few months later the application of this provision was re-

[71] *Sobr Uzak i Rasp R K P Uk*, 1919, par 351
[72] FN 16, *supra*, p 85
[73] This territory consisted of a narrow stretch of land on both sides of the tracks and was under Russian jurisdiction
[74] By the Decree of the Central Executive Committee of the R S.F S R. of Nov 15, 1922 (*Sobr Uzak i Rasp R S F S R.*, 1923, I, p. 3).
[75] *Bulleten' N.K.V D. R.S F.S.R*, 1923, No. 31.

stricted: it was not applicable to passports issued by the consuls of these republics in Vladivostok, and persons who claimed foreign nationality on the basis of these documents, but failed to leave R.S.F.S.R. territory, were nevertheless considered citizens of the R.S.F.R.S., and had to exchange their passports for the identification required for such citizens of the R.S.F.S.R.[76]

Furthermore, since the treaties concluded between the R.S.F.S.R. and the Baltic Republics formed within the former territory of the Russian Empire did not apply to the Far-Eastern Republic (D.V.R.), the above Circular provided that persons residing there who desired to return to their Baltic *fatherlands* and who in accordance with the provisions of those treaties would be eligible to the right of option, were to be transported to their respective states. Transportation was also provided for persons who had taken advantage of the right of option in conformity with Article 10 of the Constitution of the Far-Eastern S.S.R. The difference, however, between these two categories of persons was that in case of their failure to file applications for transportation the former became citizens of the R.S.F.S.R., *ipso facto*, exercising thus their right of option by failure to apply for evacuation, whereas the latter had already become invested with the new citizenship by the previous exercise of the right of option, under the Far-Eastern S.S.R. (D.V.R.) Constitution, and their status as foreigners was unaffected by their failure to apply for free transportation to their adopted fatherland.[77]

The Georgian Decree of July 11, 1922,[78] gave the right of renouncing Georgian citizenship to Georgian citizens of non-Georgian race within six months of the publication of the Decree,

[76] Circular of the People's Commissariat for the Interior of the R.S.F.S.R. of Feb. 13, 1924, No. 64 (*Bulleten' N.K.V.D. R.S.F.S.R.*, 1923, No. 7). The reason for this exception was evidently the fact that during the time when Vladivostok was under the control of the Anti-Bolshevist Government (Brothers D. and N. Merkulov and later General Dieterichs) from May 26, 1921, until Nov. 22, 1922, many officers of the White Army, as well as others to whom the inevitable occupation of the city by the Red forces would prove dangerous, and who could not leave the city on time, as a matter of precaution secured for themselves passports of either Poland or one of the Baltic Republics. (Author.)

[77] See Egor'ev and others, *as cited*, pp. 54–55.

[78] *As cited, supra*, FN 31, p. 92.

it being an essential condition that they leave the country. The Federal Law of the Transcaucasian S.F.S.R. on the subject is found in the Decree of the Council of Peoples' Commissaries of the Transcaucasian S.F.S.R. of April 5, 1923, Article 1 of which reads:

"Persons declaring themselves nationals of the non-Soviet states formed within the territory of the former Russian Empire, may be considered as such only under condition that they have their certificates (national passports), or if, in conformity with the treaties concluded with the limotroph [Baltic] states, they have filed their petitions for option, provided that these petitions are considered *bona fide* by the Soviet [Transcaucasian] authorities." [79]

Repatriation

Although technically repatriation is not a method of acquiring nationality, for the Soviets it presented a problem closely connected therewith. At the close of the civil wars it was one of the major issues confronting them. Their method of dealing with it may be analyzed from two aspects: as to foreigners in Russia and as to Russians abroad.

Foreigners

Foreigners in Russia, subject to repatriation, comprised chiefly: (1) nationals of the Central Powers, who had been taken prisoners during the World War, (2) nationals of the Allied and Associated Powers or of neutral countries, who had either been taken as prisoners by the Red Army during the intervention in the years 1918-1921, or who had come to Russia before the Bolshevist Revolution, and (3) refugees from Poland and the Baltic Provinces, who had left their homes during the World War either voluntarily or under compulsion. To the last group must be added also the prisoners taken by the Red Army during the wars which Poland and the Baltic Republics fought with the R.S.F.S.R. for their independence.

The repatriation of the war prisoners comprising the first group was provided for either in the peace treaties, or in special conventions concluded between the R.S.F.S.R. and the Powers that had been at war with Russia. These provisions were in conformity with the generally accepted rule that repatriation takes

[79] Decree on "Persons Considering themselves Citizens of non-Soviet Republics formed in the Territory of the Former Russian Empire" (*Sobr. Uzak i Rasp R.S.F.S.R.*, 1923, pp. 98–99).

place on the basis of exchange and of the free consent of the prisoners.[80]

In general the same principles governed the repatriation of nationals of the Allied and Associated Powers and of neutral states, who had either been taken prisoners by the Red Army in 1918-1921, or had come to Russia before the October Revolution of 1917. The conventions concluded for this purpose may be divided into two groups, one for those agreements which distinguish between prisoners of war and civilians, and the other for those dealing with "nationals" without any distinction. To the first belong the Convention between the R.S.F.S.R. and Great Britain of February 12, 1920; the Convention with France of April 20, 1920, and the Convention with Italy of April 27, 1920.[81] Here, too, as in the conventions with the Central Powers, the Soviets recognize the principles of exchange and free consent of the persons entitled to be repatriated. It is of interest to note that in these conventions France, Belgium and Great Britain respectively agreed to return to the R.S.F.S.R. "all Russian nationals, both war prisoners and civilians," while the Soviets promised to repatriate to France and Italy all French and Italian "nationals, civil and military," and to Great Britain both "civilians" and "war prisoners," the term "prisoners" being used only in regard to British subjects.

There are two treaties for the repatriation of persons who came to Russia before the Bolshevist Revolution. One is with Belgium of April 20, 1920, and the other with Denmark of December 18,

[80] See Agreement with Austria of July 5, 1920 (*Sborn. Deistv. Dogov.*, I, 1921, p 117); Agreement with Hungary of May 21, 1920 (*ibid*, I, 1921, pp 125–127); Agreement with Poland of Oct 12, 1920 (*ibid*, II, 1921, pp. 108–120, IV, 8, L.N.T.S); Agreements with Germany of April 19 and 23, 1920, and July 7, 1920 (ibid, I, 1921, pp. 128–134, II, 64, 86, L.N.T.S), Convention with Turkey of March 28, 1921 (*ibid.*, II, 1921, pp. 121–123). *Cf.* also Agreement with Hungary of July 28, 1921 (*ibid*, II, 1921, pp 86–88); Supplementary Agreements with Germany of Jan. 22, 1921, and of May 6, 1921 (*ibid.*, II, 1921, pp 89, 94, XII, 178, L.N.T.S.). The clause of free consent was omitted in the Agreement with Hungary of May 21, 1920 No agreement was ever concluded with Bulgaria. In the Agreement with Germany of April 19, 1920, under "war prisoners" are understood (Arts. 3 and 4) also persons who were taken prisoners during the Civil War in Russia. The term "war prisoners" was made to cover prisoners taken during the struggle between the R.S.F.S.R. and anti-Bolshevist forces in Finland, the Baltic States and the Ukraine, where many Germans joined these forces. (Author.)

[81] *Sborn. Deistv. Dogov.*, I, 1921, pp. 120–123, 156–162 and 141–142 respectively; I, 264, L.N.T.S. (for the Convention with Great Britain).

1919.[82] Each provides for mutual repatriation of their nationals in general, without dividing them into separate classes or groups, and adds nothing new from the point of view of international law.

The problem of the repatriation of Poles, Finns, Estonians, Letts and Lithuanians was of considerable importance for the Soviets. As Poland and the Baltic Provinces were within the zone of belligerent activities during the World War, a great many of the local population were forced to leave their homes and seek refuge in the interior of Russia. At the time of the conclusion of the Peace Treaties by the R.S.F.S.R. with the newly formed Baltic States and with Poland these refugees were still in Russia. In addition to these, there were the prisoners taken by the Red Army during the wars with these republics during 1918-1921. To secure a quick way of returning these "foreigners" to their respective countries, the Soviets entered into a series of agreements providing for repatriation. The procedure was simplified to the utmost. Evidence of former domicile and of the time of leaving the respective provinces was submitted to a special Bureau, and after the lists of the petitioning foreigners were approved by the proper authorities, those entitled to repatriation were sent to their respective countries.[83] These agreements follow the usual rule requiring the free will of those to be repatriated, and differ from those concluded with Western European States only in that they refer mainly to "refugees." These treaties prove that the Soviet authorities realize the difference between the principle of option and of repatriation. While the former is a legal method

[82] *Sborn. Deistv. Dogov.* I, 1921, pp. 119 and 139–140 respectively

[83] *Cf.* Treaties concluded by the *R S F S R.* relative to refugees. with Lithuania of June 13, 1920, and of June 30, 1920; with Latvia of Nov 16, 1920, with Estonia of Aug 19, 1920 (*Sborn Deistv. Dogov*, I, 1921, pp 143–147, 148–150, 151–155 and 163–164 respectively). See also, the Agreement on Repatriation between the R S F S R and the Ukrainian S S R and Poland of Oct 12, 1920 (*ibid.*, II, 1921, pp 108–120; IV, 8, L N T S); the Protocol of Oct 3, 1921, concluded between the R S F S R. and the Ukrainian S S R and Hungary with the participation of Latvia and the International Red Cross (*ibid*, III, 1922, pp 80–83), and the Agreement between the R S F S R and Finland of Aug 12, 1922 (*ibid*, IV, 1923, pp. 28–36, XIX, 106, L N.T S). *Cf* also Supplement to Arts. 7 and 8 of the Treaty of Peace with Latvia of Aug. 11, 1920 (*ibid.*, I, 1921, p. 39, II, 196, L N T S); Arts 11 and 25 of the Treaty with Finland of Oct. 14, 1920 (*ibid.*, pp 81 and 90, III, 6, L N T S); Supplement to Art 9 of the Treaty of Peace with Estonia, Feb 2, 1920 (*ibid*, p 107; XI, 30, L N T S).

of acquiring citizenship, repatriation is a practical method of restoring persons to the jurisdiction of the state to which they owe allegiance.

Russians

The other aspect of the problem of repatriation to be analyzed is in regard to Russians abroad. These Russians consisted of two distinct groups: (1) prisoners of war taken captive by the Central Powers from 1914–1918, and (2) Russian "emigrés," including all Russian citizens who remained outside Soviet territory after the November[84] Revolution of 1917. The repatriation of the war prisoners was effected by treaties in the usual terms, with the interesting exception that in the treaty with Hungary a distinction was made between officers (members of the bourgeois class) and enlisted men (members of the proletariat).[85]

Of much greater interest were the problems connected with the repatriation of Russian emigrés. These emigrés may be divided into three groups. First, there were the former Russian nationals residing in the newly formed republics of Estonia, Latvia, Lithuania, Poland, and Finland, who did not opt to become nationals of these republics and yet did not wish to return to Russia; second there were those who had taken part in the civil war on the side of the anti-Bolshevist forces, and who had left Russia together with other political emigrés, not wishing to remain under the Soviet régime; finally, there were Russian nationals who were abroad at the time of the November Revolution of 1917, and who preferred not to return to Russia thereafter.

In analyzing the attitude of the Soviet Government toward these emigrés, two periods must be distinguished. During the first the Soviet Government offered them the possibility of a quick return to Russia. During the second an alternative was held out: either to become Soviet citizens within a given time, or to lose the chance ever to become such. The first period extended from the early part of 1920 for almost two years. The repatriation

[84] The Bolshevist Revolution of 1917 is always referred to in Soviet documents and literature, as the "October" Revolution It took place on October 28, 1917, under the old style calendar Since this date corresponds to November 7th by the new calendar, in foreign literature it is referred to as the "November" Revolution

[85] *Cf.* Chapter IX on "Treaties," *infra*, p 255.

treaties concluded with the countries in which the emigrés were residing included provisions offering them the possibility of being repatriated with complete immunity.

The second period began with the latter part of 1921, when all the Russian emigrés still remaining in exile did so because they placed no confidence in Soviet promises of amnesty, and preferred to await future developments. To secure the return of these, the Soviet Government was forced to take special measures. The first step was the issue of a Circular by the People's Commissariat for Foreign Affairs on August 11, 1921, by which the Representatives of the Soviet Government abroad were authorized to issue provisional identification certificates to persons "declaring themselves Russian nationals." Next came the Decree of December 15, 1921, applicable to Russians who had resided abroad uninterruptedly for five years; those who had left Russia subsequent to November 7, 1917, without permission from the Soviet authorities; those who had served in the White Armies; those who had failed to take advantage of the right of option, to which right they were entitled.[86] According to the decree, the right to acquire Soviet citizenship was to be forfeited by such emigrés if they failed to procure the necessary certificates from the Soviet Representatives before March 1, 1922.

In addition, a series of special decress was issued, with a view to providing an easy and quick return to Russia for the proletariat, as distinct from the "bourgeoisie." These decrees may be divided into two classes: those which granted amnesties to particular groups of emigrés,[87] and those drawn in more general terms. To the latter belong the general amnesty for Russian

[86] *Sobr. Uzak i Rasp. R.S.F.S.R.*, 1921, pp. 710–711 For text see Appendix III The provisions of the decree later were included in Art 12 of the Decree of the Central Executive Committee of the U.S.S.R., Oct 29, 1924 (*Sobr Zak. i Rasp S.S.S.R.*, 1924, I, p. 202).

[87] Among such decrees may be mentioned the amnesty of July 20, 1922, confirmed by the All-Russian Executive Committee on Jan. 15, 1923; amnesty for persons expelled from Poland, Aug 11, 1923; amnesty to the participants of the Kronstadt uprising, Nov 2, 1922; amnesty to the soldiers of General Miller's army, Jan. 31, 1923; Decree of the Central Executive Committee of the Karelian A.S.R. (K.A.S.R.) of Mar 16, 1925, by which amnesty was granted to the Karelian refugees; the Decree of Apr. 5, 1924, of the Central Executive Committee of the Volga German Republic; and finally the amnesty for Yakutians granted by the Central Executive Committee of the Yakutsk A.S.S.R. by the Decree of May 1, 1924, and confirmed by the All-Russian Central Executive Committee on June 2, 1924. (In Egor'ev and others, *as cited*, p 28)

enlisted men of the anti-Bolshevist armies,[88] and the Decree on Registration and Demobilization of War Prisoners Abroad.[89] Although these acts make no direct reference to acquisition of citizenship by the persons in question, their language suggests that together with the remission of punishment and the right of repatriation, upon condition of immediate return, option for Soviet citizenship is automatically involved by the registration required of such former Russian nationals.

Loss of Citizenship

Opposed to acquisition is the loss of citizenship. Loss of citizenship may be voluntary or involuntary from the point of view of the individual. It is voluntary in the case of minors who upon becoming of age are permitted to elect the nationality of either parent and in the case of inhabitants of a territory accorded the right of option. It is involuntary both when it is automatic, as in the case of minors following the nationality of their parents and of husband or wife acquiring the nationality of the other by force of law, and in instances where citizenship is forfeited against the will of the individual in virtue of a special governmental decree or court decision.

Voluntary

However, the state is also concerned in this severance of a legal relationship between it and its citizens. The attitude it assumes varies with the circumstances and with the country under consideration. When a *choice* of citizenship has been definitely offered the individual, as in the case of minors upon becoming of age, or a population exercising the right of option, the state acquiesces in the will of its citizens, and denaturalization follows as a matter of course. When, however, the citizen himself initiates the change of nationality it is by no means certain that his sovereign will release him from his allegiance. There are three possibilities in this connection. There are states which never release their nationals from their political allegiance. Then there are states which release their nationals from allegiance only upon explicit permission from their authorities to become nationals of another state. Finally, there are some states which automatically

[88] Decree of All-Russian Central Executive Committee of Nov. 3, 1921 (*Sobr. Uzak. i Rasp., R.S.F.S.R.*, 1921, p. 725). *Cf.* also Instructions annexed to the Circular of the People's Commissariat for Foreign Affairs of Apr 4, 1925, p. 276 (in Egor'ev and others, *as cited*, p 39).

[89] July 4, 1923 (*Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1923, I, p 1137)

release their nationals from allegiance when they acquire foreign citizenship.

Soviet practice reflects all these possibilities. Prior to the formation of the Union, there was no provision for loss of nationality of the R.S.F.S.R. or of the Transcaucasian S.F.S.R. upon the acquisition of a foreign citizenship. It might be lost, however, in the Ukrainian S.S.R.,[90] in the White-Russian S.S.R.,[91] and in the Georgian S.S.R.,[92] but only upon explicit permission to that effect. The Ukrainian Statute on Foreigners in the Ukrainian S.S.R. of March 28, 1922, provides that Ukrainian citizenship may be renounced if permission has previously been obtained from the Ukrainian Government. Article 34 of this Statute enumerated the documents which the petitioner must submit, among them one proving that the petitioner was not of Ukrainian origin. This implies that Ukrainian citizenship may be renounced only by Ukrainian citizens who are of non-Ukrainian origin. Unfortunately, however, the Statute does not indicate which principle is to be taken as the basis for determining Ukrainian origin: *jus sanguinis* or *jus soli.*

The White Russian Statute on Foreigners of August 4, 1922,[93] is in general similar to that of the Ukrainian S.S.R., except that it contains no provision limiting the right of denaturalization. The law of the Georgian S.S.R. on the right of denaturalization is found in the provisions of Article 8 of the Decree of its Council of Peoples' Commissaries of July 11, 1922 [94] by which Georgian citizenship was lost by persons who had become citizens of a foreign state, and persons who had entered the service of a foreign state without permission of the Georgian authorities. A supplementary Decree of the Council of Peoples' Commissaries of the Georgian S.S.R. of Feb. 5, 1924, on Georgian citizenship in part reads:

[90] Decree of the All-Ukrainian Central Executive Committee of Mar. 28, 1922 (*Sobr Uzak. R K.P.Uk*, 1922, p. 238).

[91] Decree of the Council of Peoples' Commissaries of Aug. 4, 1922 (*Sobr. Uzak B.S.S.R*, 1922, p 148).

[92] Decrees of Council of Peoples' Commissaries of July 11, 1922, and of Feb. 5, 1924 (in Egor'ev, *as cited*, p 30). *Cf.* the Decree of the Central Executive Committee of the Transcaucasian S F S R. of May 21, 1923.

[93] *Sobr. Uzak B S.S R*, 1922, p 148.

[94] Egor'ev and others, *as cited*, p 30

"Art. 2. When a Georgian citizen gives up his [Georgian] citizenship and becomes a citizen of a foreign state he must leave the country [Georgia] and have permission [from the Soviet authorities] to sever his allegiance to the Soviet Government." [95]

After the formation of the Union, the Soviet law on denaturalization of Soviet citizens was contained in the Statutes of 1924, 1930, and 1931. The pre-Union laws of the separate Soviet republics had mentioned only denaturalization of Soviet citizens residing in the Soviet republics. The Statute of 1924, on the contrary, made no reference to the whereabouts of the citizen who wished to divest himself of Soviet citizenship. To quote Article 13:

"Union citizenship may be renounced only with the permission of the central executive committees of the union republics or of the Central Executive Committee of the U.S.S.R." [96]

The provision of the Statute of 1930 is more satisfactory, for it makes a definite rule for each case, *i.e.*, for Soviet citizens residing within the U.S.S.R., and for those residing abroad. The former may be denaturalized by the decree of the Presidium of the Central Executive Committee of the U.S.S.R. or by the Presidium of the Central Executive Committee of the corresponding union republics. As to persons residing abroad and desiring to divest themselves of Soviet citizenship incidental to acquiring a new nationality, permission to renounce Soviet citizenship is to be obtained from the Central Executive Committee of the U.S.S.R. To quote Article 14:

"Denaturalization of citizens of the U.S.S.R. is permitted:

"*A.* To persons residing within the U.S.S.R., by the decree of the Presidium of the Central Executive Committee of the U.S.S.R. or by the Presidium of the corresponding union republic.

"*B.* To persons residing abroad, by the decree of the Central Executive Committee of the U.S.S.R.

"Persons who have been refused by the Presidium of the Central Executive Committee of the union republic may file a protest with the Presidium of the Central Executive Committee of the U.S.S.R." [97]

[95] *Sobr. Zak. S.S.R.G.*, 1924, No. 4 (Egor'ev and others, *as cited*, p. 30).
[96] *Sobr. Zak i Rasp, S.S.S.R.*, 1924, I, p. 366.
[97] *Cf.* Art. 14 of the Statute of 1931 (Appendix V).

Involuntary

Opposed to the voluntary methods of losing nationality are the involuntary ways by which a person may be deprived of his citizenship. Here belong loss of citizenship by minors whose parents change their political allegiance; by parties to a marriage if the law does not preserve their citizenship to them; and finally by those deprived of their citizenship by governmental decrees promulgated especially to that end. Whereas Soviet practice as to change of nationality under the two former conditions has already been discussed, that relative to the latter remains to be analyzed.

Prior to the formation of the Union, the laws of the separate Soviet Republics on the subject were not numerous. Thus, in the R.S.F.S.R. there were two decrees, one of October 28, 1921 [98] of the Council of Peoples' Commissaries, and the other of December 15th of the same year [99] of the Central Executive Committee and the Council of Peoples' Commissaries, jointly, superseding the earlier one and repeating its provisions literally, the only difference being in the time given for taking out Soviet passports by Russian nationals residing abroad. While, according to the Decree of October 28, 1921, the passports had to be taken out by March 1, 1922, the Decree of December 15 extended the time until June 1, 1922. To quote the Decree of the December 15, 1921, on "Forfeiture of Soviet Citizenship by Certain Categories of Persons Residing Abroad":

"The All-Russian Central Executive Committee and the Council of Peoples' Commissaries [jointly] decree:

"1. Persons of the following categories residing abroad after the promulgation of this decree lose their rights of Russian [*sic*] citizenship:

"(*a*) Persons who have resided abroad uninterruptedly over five years, and who fail to take out before June 1, 1922, their passports or corresponding identification papers from Soviet representatives.

Note: This term does not apply to the countries where there is no Representation of the R.S.F.S.R. In those countries the term will be decided upon the establishment of such representations.

"(*b*) Persons who left Russia after November 7, 1917, without the permission of the Soviet authorities.

"(*c*) Persons who voluntarily served in the Armies against the

[98] *Sobr. Uzak i Rasp R S F.S R.*, 1921, pp 710–711.
[99] *Ibid*, 1922, I, pp. 7–8.

Soviets or who have participated in any kind of counter-revolutionary organizations.

"(*d*) Persons who had the right to opt for Russian [*sic*] citizenship and did not do so within the time allowed.

"(*e*) Persons who do not fall within the group of persons mentioned in clause 'a' of this Article, but who reside abroad and who have not registered their names with the Representations of the R.S.F.S.R. within the time indicated in that clause and in the note thereto.

"2. The persons enumerated in clauses 'b' and 'c' of Article 1 may file through the respective [Soviet] representatives their applications addressed to the All-Russian Central Executive Committee asking for restitution to their rights [of Russian (Soviet) citizenship]."

The Ukrainian law did not differ from that of the R.S.F.S.R. Article 38 of the Decree of the All-Ukrainian Central Executive Committee of March 28, 1922, repeated almost exactly the provisions of the R.S.F.S.R. law just quoted,[100] except that the time allowed for taking out passports was extended to January 1, 1923. The laws of the White-Russian S.S.R.[101] and of the Transcaucasian S.F.S.R.[102] did not differ from the above two. Notice must be taken of the fact that these decrees made no provision for the case of persons who left Soviet territory illegally without the required permission from the Soviet authorities after the promulgation of these decrees, or after the expiration of the time provided therein for registration for Soviet citizenship. Such persons, according to the Circular of the People's Commissariat for Foreign Affairs of April 10, 1923, No. 89, "although not losing their Russian [*sic*] citizenship, have no right to ask from the [Soviet] Representative Plenipotentiary or from the consuls, any aid, protection or assistance, such as are usually accorded to other Russian [*sic*] citizens." [103]

After the formation of the Union the Soviet law on the involuntary loss of citizenship is found in the provision of Article 12 of the Statute of 1924:

[100] *Sobr. Uzak. i Rasp. R.K.P.Uk.*, 1922, par. 237.

[101] Art. 14 (*Sobr. Uzak. i Rasp. B.S.S.R.*, 1922, par. 48).

[102] Degree of Central Executive Committee of the Transcaucasian S.F.S.R. of May 21, 1923 (in Egor'ev and others, *as cited*, p. 35).

[103] Egor'ev and others, *as cited*, p. 50. This Circular was extended by a later Circular of the same Commissariat (June 10, 1923, No. 90) to persons who left the Soviet Union after 1923 and who became affiliated with the anti-Bolshevist organizations abroad *Cf* also Circular of the People's Commissariat for Foreign Affairs of May 13, 1924.

"The citizenship of the Union of S.S.R. is lost by:

"A—Persons who have been deprived of Soviet citizenship in conformity with legislative acts of the Union Republics promulgated prior to July 6, 1923, or in conformity with the legislation of the Transcaucasian S.F.S.R.;

"B—Persons who left the territory of the Union of S.S.R. both with the permission of the U.S.S.R. or of any of the Union Republics or without the same, and who have not returned or do not return upon the request of the authorities;

"C—Persons who have been released from Soviet citizenship in conformity with the provisions of law;

"D—Persons expatriated by the decisions of the courts." [104]

Two things should be noted here: first, the provision of clause "A" of this Article evidently sanctions the continuance in force of the decrees of the separate Union Republics promulgated prior to the formation of the Union; second, it makes expatriation result in loss of citizenship.

The Statutes on Soviet Citizenship of 1930 and 1931 unfortunately contain no provision relative to involuntary loss of citizenship.

Another document which appeared after the formation of the Union, and which evidences the possibility of involuntary loss of Soviet citizenship is the Criminal Code of the R.S.F.S.R. of 1924. According to Article 20, clause "a," of this Code one of the methods of "social protection" (this term corresponds to "punishment" as used in non-Communist criminology) is the declaration of a person as "an enemy of the toiling masses." Loss of citizenship of the R.S.F.S.R., and hence of Union citizenship, and compulsory banishment from Soviet territory are the automatic consequences of such a declaration.[105] In contradistinction to the Statute of 1924 which speaks of the loss of citizenship by persons residing abroad, this provision of the Criminal Code refers only to persons within Soviet territory. The fact that the Criminal Code of the R.S.F.S.R. served as a prototype for the Criminal Codes of other Union Republics, may explain to a certain extent why in the Union Statutes on Citizenship of 1930 and 1931 no mention is made of involuntary loss of Soviet citizenship.

[104] *Sobr Zak i Rasp S.S.S.R*, 1924, pp. 364–366.
[105] *Sobr. Kodeksov R.S.F.S.R*, 4-e izd, p. 657.

Summary

Despite the communist belief that "the proletariat has no country of its own until it seizes political power and takes the means of production out of the hands of the exploiters," [106] and despite the theoretical insistence of Marx upon the disindividualization of man by making him an integral unit of a class, for practical purposes the Soviets lay primary emphasis not upon the class affiliation of a person, but upon his political allegiance, even attaching Soviet citizenship to former subjects of the Russian Empire, not only those belonging to the proletarian class, but also Russians who neither by birth nor political convictions are affiliated therewith. Even assuming that this inconsistency of attitude is only temporary, it serves as another illustration of the difference between the theoretical effect of abstract Marxian dogmas and their actual significance in practical application as regards the current principles of International Law.

[106] *Kommunisticheskii Internatsional v Dokumentakh, 1919–1932*, pp. 798–799.

CHAPTER VI

PERSONS

II STATUS AND LEGAL CAPACITY OF FOREIGNERS

INTERNATIONAL law is concerned with persons not only in regard to the establishment of their citizenship, but as concerns their status and legal capacity in foreign countries as well. The latter are to be studied from two aspects: (1) the rules relative *to admission to, departure from, and sojourn in the foreign* country, and (2) the rules regulating the legal rights and capacities of persons abroad.

Movement

Legally every sovereign state has the right to neglect all relations with the outside world, and to forbid any entry of foreigners. Practically, however, such isolation would be inconsistent with the most elementary ideas of international economic relationship, as well as political philosophies. Hence, as a matter of fact, foreigners are ordinarily admitted to states within the Family of Nations. The Soviets recognize this principle, although in the early days of their existence the entry of foreigners was strictly dependent upon treaty agreements.

Immigration

The early agreements contemplated the admission of a limited number of especially appointed persons only, for the purpose of carrying on trade relations between the Contracting States. To quote Article 4 of the Trade Agreement between the R.S.F.S.R. and Great Britain of March 16, 1921:

"Each Party may nominate such number of its nationals as may be agreed from time to time as being reasonably necessary to enable proper effect to be given to this agreement . . . and the other party shall permit such persons to enter its territories, and to sojourn and carry on trade there, provided that either party may restrict the admittance of any such persons into any specified areas, and may refuse admittance to or sojourn in its territories to any individual who

is *persona non grata* to itself, or who does not comply with this agreement or with the conditions precedent thereto."[1]

This semi-official character with which persons admitted to Soviet territory were endowed under these earlier agreements gradually lost its importance. Emphasis continued to be placed, however, upon commercial aims in providing for the admission of foreigners to Soviet Russia, as is seen in the Provisional Agreement with Germany of May 6, 1921, the Agreement with Austria of December 7, 1921, and that with Czechoslovakia of June 5, 1922.[2]

In later agreements, such as that with Denmark of April 23, 1923, and with Sweden of March 15, 1924, entry was permitted not only for commercial purposes, but for other purposes justifiable from the point of view of international intercourse, as well. Article 4 of the Treaty with Denmark reads:

"In order to develop and facilitate commercial relations between the two countries, the two Parties undertake to grant admittance to their respective territories to nationals of the other Party for the purpose of carrying on commercial and industrial activities and for other justifiable purposes, subject always to the regulations in force in the respective country regarding the admission of foreigners.[3]

Today theoretically, and as a general rule, all private foreigners are equal in the eyes of the authorities as regards their right to enter the Soviet Union. Contrary to expectations, no distinction is made between the reception of "bourgeois" and proletarian foreigners applying for entry. As an exception, when a boycott was declared against Switzerland, following the assassination of Vorovsky, a Decree of the Central Executive Committee of the R.S.F.S.R. of June 20, 1923, provided that no *visas* were to be granted to foreigners travelling with Swiss passports, with the exception of "workers who are not responsible for the un-

[1] *Sborn. Deistv. Dogov*, I, 1924, p. 49; IV, 128, L N T S. *Cf.* the provision of Art. 5 referring in similar terms to persons who may be officially appointed to supervise and advance the trade

[2] *Ibid*, I, 1924, pp. 56, 137 and 188 respectively; VI, 268, L.N.T.S. (for the Provisional Agreement with Germany).

[3] *Ibid*, I, 1924, p 65; XVIII, 16, L.N T S. The provision of Art 2 of the Treaty with Sweden is similar (*ibid.*, I–II, 1928, p 267; XXV, 252, L N.T.S.). A similar provision is found also in Art. 4 of the Treaty of Commerce with Italy of Feb. 7, 1924 (*ibid.*, II, p. 36).

precedented act of the Swiss Government." [4] As an isolated act of reprisal, this decree has no particular legal significance.

Special laws controlled the admission of diplomatic agents of foreign countries, which problem is dealt with in greater detail in the chapter on "Diplomacy." [5]

Ordinarily the entry of foreigners into a state is conditioned by certain technical formalities for the control of immigration, the requirement of passports and regard for established quotas being among the most usual. It is true that by 1914 European states, with the exception of Russia, Turkey, and Roumania had abolished the requirement of passports, but the World War revived it, and today the problem of passports is again of considerable importance. The requirement of passports having been continued from the Imperial Russian Régime, the Soviets concern themselves rather with the technicalities of their issue.

The first mention of passports in Soviet official documents is found in the Instructions of the People's Commissariat for the Interior of the R.S.F.S.R. of February 14, 1921, stating in very general terms that foreign nationality is proved by passports issued by duly commissioned authorities. A series of supplementary laws, departmental instructions, and statutory provisions of separate Soviet Republics was later issued, modifying and completing the original rules concerning passports.[6]

[4] *Sobr. Uzak. i Rasp R.S.F.S.R.*, 1923, I, pp 1039–1040

[5] For other documents relative to the entry of foreigners into the Soviet Union, see Circulars of the People's Commissariat for the Interior of May 28, 1924, No. 189, of June 19, 1925, No 342; of Oct 20, 1922, No. 328; and of Jan 7, 1924, No. 7 (in Egor'ev and others, *as cited*, p 145, and *Bulleten' N.K.V.D R.S.F.S.R.*, 1925, No 3, 1922, No 40, and 1924, No 4, respectively).

[6] During the years 1921–1925 there were issued over fifty Circulars and Instructions by the People's Commissariat for the Interior (dates and numbers in Egor'ev, *as cited*, pp. 110–111). For others see Arts. 2–3 of the Statute on Foreigners in the Ukrainian S.S.R. of Mar. 28, 1922, amended by the Decree of June 4, 1924 (*Sobr Uzak i Rasp. R.K.P.U.*, 1924, par 121), Arts 2–4 of the similar Statute in the White-Russian S.S.R. of Aug 4, 1922 (*Sobr Uzak B.S.S.R.*, 1922, par 148); Decree of the Council of Peoples' Commissaries of the Transcaucasian S.F.S.R. of May 16, 1923, and the Circular of the People's Commissariat for the Interior of the R.S.F.S.R., Mar. 29, 1922, No. 96 (*Bulleten' N.K.V.D R.S.F.S.R.*, 1922, No. 12) For enactments after 1923, see a Circular of the People's Commissariat for the Interior of Sept. 6, 1924, No. 398 (*ibid*, 1924, No. 33). *Cf* also Circular of the People's Commissariat for the Interior of the White-Russian S.S.R. of Nov. 13, 1924, and the Decree of Council of Peoples' Commissaries of the Transcaucasian S.F.S.R of May 16, 1923, amended by the Decree of the Council of Peoples' Commissaries of the Transcaucasian S.F.S.R of June 19, 1924 (in Egor'ev, *as cited*, p. 106), Decree of the Council of Peoples' Commissaries of the Transcaucasian S.F.S.R of July 24, 1923 (*Zaria Vostoka*,

Under the U.S.S.R. the issue of passports to foreigners was regulated by a Circular of the People's Commissariat for Foreign Affairs of April 28, 1923, No. 95, by a Circular of the People's Commissariat for Foreign Affairs of March 3, 1925, and by the Statute on Entry into the Union of S.S.R. of June 5, 1925.[7] According to Article 1 of the first, the visas for entry into the U.S.S.R.[8] were to be granted by the Soviet Representatives Plenipotentiary, the consuls being given the right to visé passports only upon special orders of the People's Commissariat for Foreign Affairs in each separate case (Art. 2). In countries where there were no Soviet Diplomatic Missions, the visas could be granted by "other missions and delegations." The right to grant visas for entry into the U.S.S.R. was given to consuls by the Circular of the People's Commissariat for Foreign Affairs of March 3, 1925, No. 263. The final formulation of the rule relative to granting visas for entry into the U.S.S.R. is found in Article 1 of the Statute of 1925:

"Permits to enter the territory of the U.S.S.R., both for foreigners and for Soviet citizens . . . are issued by the People's Commissariat for Foreign Affairs of the U.S.S.R., the representatives plenipotentiary and the consulates of the U.S.S.R., as well as by especially authorized agents of the U.S.S.R. abroad. . . . The permit for entry . . . is given in the form of a visa stamped on the passport."[9]

The Criminal Codes of the R.S.F.S.R. and of the Ukrainian S.S.R., also contained provisions on passports. Thus, according to Article 84 of the former:

July 27, 1923, No. 171); Circulars of the People's Commissariat for the Interior of the R.S.F.S.R. of Oct. 31, 1925, including the Statute on Passports for Foreigners, No. 572; of Oct. 24, 1924, No. 493; of Aug 8, 1925, No 431; of Dec. 3, 1923, No. 429; of July 6, 1925, No. 370 (*Bulleten' N K V D, R S.F.S.R.*, for respective years); the Instructions of the People's Commissariat for the Interior of the Ukrainian S.S.R., No. 290, of July 6, 1923, on the Manner of Recognizing Foreign Citizens and of Issuing Identification Certificates (*Bulleten' N K V.D, Uk S.S R*, 1923, No. 21). See also Circular of People's Commissariat for Foreign Affairs of Aug 27, 1923, No. 123.

[7] Decree of the Central Executive Committee of the U.S.S.R. (*Sobr. Zak. i Rasp S.S.S R*, 1925, pp 589–593.)

[8] The original text spoke of entry into the R.S.F.S R; after the formation of the Union, however, these Instructions were made applicable to the Union as a whole For the text of the Instructions, see Egor'ev and others, *as cited*, pp. 141ff.

[9] No visa was required from the following persons: (1) those who had a return visa issued to them before leaving the U.S.S R., (2) those having a permanent visa, (3) seamen, and (4) inhabitants of certain frontier zones (see *infra*, p 131).

". . . departure from or entry into the Union of S.S R. without the required passport or permit from the respective authorities is punished by compulsory labor of not over one year, or payment of not over five hundred rubles."

Article 59[10] reads:

"Assisting in illegal crossing of state frontiers undertaken as a profession or by an official is punishable by imprisonment with solitary confinement for not less than one year." [10]

Article 98 of the Ukrainian Criminal Code combines both these provisions, the only difference being that the penalty for aiding in illegally crossing the frontier may amount to capital punishment.[11]

Not only in national legislation, but in treaties providing for the admission of foreigners, passports are dealt with. A provision of peculiar interest is contained in Article 6 of the Agreement with Denmark of April 23, 1923, prior to *de jure* recognition of the R.S.F.S.R.:

"Passports, documents of identity, powers of attorney and similar documents issued or certified by the competent authorities in either country shall be treated in the other country as if they were issued or certified by the authorities of a recognized foreign government." [12]

Emigration

The rules regulating the departure of foreigners from the Soviet Union are issued by the People's Commissariat for the Interior of the Union Republics, as to foreigners travelling in a private capacity, and by the People's Commissariat for Foreign Affairs of the U.S.S.R., for members of the foreign diplomatic and consular service. They are uniform throughout the whole Union and require of all foreigners without distinction a visa for leaving the country.[13] The fees for these visas, in the R.S.F.S.R.

[10] *Sobr. Kodeksov R.S.F.S.R*, 4-e izd., pp. 677 and 672, respectively.

[11] *Sobr Uzak i Rasp. R.K.P.Uk*, 1922, p. 574

[12] *Sborn Deistv Dogov.*, I, 1924, p 66; XVIII, 16, L.N.T.S *Cf* Art. 8 of the Agreement with Great Britain of Mar. 16, 1921 (*ibid*, p. 50, IV, 128, L.N.T.S.), Art. 7 of the Agreement with Norway of Sept. 2, 1921 (*ibid*, p 119), Art. 8 of the Preliminary Agreement with Italy of Dec. 26, 1921 (*ibid.*, p. 71).

[13] Arts. 4 and 5 of the Statute on Entry into and Departure from the Soviet Union of June 5, 1925 (*Sobr Zak. i Rasp S.S.S.R*, 1925, I, pp. 589–593). See also Instructions of People's Commissariat for the Interior of Jan 29, 1923, No. 25, and amending Circulars of Apr. 16, 1923, No. 116, and of Dec. 21, 1923, No 458 (*Bulleten' N.K.V.D. R.S.F.S.R*, 1923, No. 9, and 1924, No. 4; Circular of People's

were regulated by a Decree of the Council of Peoples' Commissaries of the R.S.F.S.R. of March 2, 1922.[14] As in many non-communist states, the passports of diplomatic officers and other foreigners travelling in an official capacity are viséed *gratis*, while special scales of fees are used for nationals of different foreign states, in conformity with special agreements, on the basis of reciprocity.[15]

Rules governing the departure of Soviet citizens from the Soviet Union are of purely national concern, and have little bearing upon international law.[16] The Union Statute on Entry and Departure, of 1925, may be safely considered as a compilation of the laws of the separate Union Republics on the issue both of private passports for travel abroad, and of diplomatic passports. Mention must be made also of the Circular of the People's Commissariat for Foreign Affairs of 1923, No. 96, which dealt mainly with the technicalities of the issue thereof. A peculiar provision in this Circular included the wife of the bearer in diplomatic passports. The Statute of 1925 omitted this provision, although there is no evidence that such inclusion is no longer permitted.

The Soviet treaties touching upon the problem of leaving the Soviet Union may be divided into three groups. In the first belong the agreements involving mainly the repatriation of war prisoners, civilians interned during the war, and those foreigners who

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Commissariat for the Interior of Aug 21, 1924, No. 360, and Instructions of People's Commissariat for Foreign Affairs attached to Circular of May 12, 1923, No. 96 (*Bulleten' N.K.V.D. R.S.F.S.R.*, 1924, No. 31, and Egor'ev and others, *as cited*, p. 152).

[14] *Sobr Uzak. i Rasp. R.S.F.S.R., 1922*, I, p. 232 After the formation of the Union, the Decree of the Central Executive Committee of the U.S.S.R of Nov. 15, 1923, made it applicable to the whole Union (*Sobr. Zak. i Rasp. S.S.S.R.*, 1924, I, p. 109).

[15] For laws on the issue, see Instructions and Tariffs on Consular Fees of Feb. 2, 1923; Instructions of People's Commissariat for Foreign Affairs of May 12, 1923, No 96; Decree of the Council of Peoples' Commissaries of the R.S.F.S.R. of Oct. 24, 1922 (*Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1922, I, p. 870); Circulars of People's Commissariat for Foreign Affairs of Mar. 23, 1922, No. 37, of Oct. 30, 1922, No. 60 and of Mar. 27, 1925, No. 277 (in Egor'ev and others, *as cited*, pp. 162–167). *Cf.* also Instructions of People's Commissariat for the Interior of Feb. 16, 1925, No. 85; Oct. 27, 1923, No. 364; Dec. 16, 1924, No. 576; July 12, 1924, No. 294; Mar. 7, 1925, No. 144; Aug. 7, 1924, No. 330; and Jan 10, 1925, No. 22 (in Egor'ev and others, *as cited*, pp. 162–167).

[16] For the development of Soviet laws on this issue, see Egor'ev and others, *as cited*, pp. 76ff

opted to return to their respective "fatherlands," [17] and the early trade agreements.

In the Trade Agreement with Great Britain of 1921, the right of free departure from the respective countries was provided in Article 13, and the operation of the treaty itself was made conditional upon this right.

"It is mutually agreed that . . . the parties will afford all necessary facilities for the . . . withdrawal and egress from their territories of the nationals of the other party and for the withdrawal of their movable property." [18]

The second group comprises agreements in which it was foreseen that the egress from the countries concerned might take the form of mass migration. Here belong the Agreements between the R.S.F.S.R. and Germany of May 6, 1921, April 16, 1922, and the Supplement thereto of November 5, 1922; the Agreement with Turkey of March 16, 1921; and the Agreement between the Azerbeidzhan S.S.R., Armenian S S R., and Georgian S S.R. on the one hand and Turkey on the other, signed at Kars on October 13, 1921.[19] To quote Article 6 of the Treaty of 1922 with Germany:

"The States [Soviet Republics] allied with the R.S F.S.R. shall allow persons who possessed German nationality, but who have since lost it, together with their wives and children, to leave the country, provided that proof is forthcoming that they are transferring their residence to Germany." [20]

[17] *Cf* Art. 5 of the Agreement with Czechoslovakia of June 5, 1922 (*Sborn Deistv. Dogov.*, I, 1924, p 189); also Agreements with Austria of July 5, 1920, and Supplementary Agreement of Dec 7, 1921, with Belgium of Apr 20, 1920, with Hungary of May 21, 1920, of July 28, 1921, and of Oct 3, 1921, with Germany of Apr. 19, 1920, of Apr 23, 1920, of July 7, 1920, of Jan. 22, 1921, of Apr. 23, 1921, and of May 6, 1921; with Italy of December 26, 1921; with Latvia of Aug 11, 1920, and of Nov. 6, 1921; with Lithuania of June 13, 1920, of July 12, 1920, of Jan. 28, 1921, of June 28, 1921, and of Aug 3, 1921; with Poland of Feb. 24, 1921, and of Mar 18, 1921; with Turkey of Mar. 16, 1921, of Mar 28, 1921, and of Sept 17, 1921, with France of Apr 20, 1920, with Estonia of Feb 2, 1920, and of Aug. 19, 1920 For source references see Appendix XXIV.

[18] *Sborn. Deistv. Dogov*, I, 1924, pp 51–52, XVIII, 16, L N T S *Cf.* Art. 4 of the Agreement with Denmark of Apr 23, 1923; Art. 4 of the Treaty of Commerce and Navigation with Italy of Feb 7, 1924; Art 12 of the Treaty with Czechoslovakia of June 5, 1922; Art. 5 of the Convention with Japan of Jan. 20, 1925 For source references see Appendix XXIV

[19] *Ibid*, I, 1924, pp. 54, 58, 60, 155 and 160, respectively, VI, 268, L N T S., XIX, 248, L N T.S. and XXVI, 388, L N T S

[20] *Cf.* Art. 9 of the Treaty with Germany of May 6, 1921

Article 12 of the Treaty with Turkey of March 16, 1921, reads:

"Every inhabitant of the territories which prior to 1918 were part of Russia and which in conformity with this treaty at the present are recognized by the Government of the R.S.F.S.R. as being under the suzerainty of Turkey has the right freely to leave Turkey and to take with him his goods and property, or the equivalent value thereof. The same provisions apply also to the inhabitants of the Batum territory, suzerainty over which Turkey is hereby transferring to Georgia." [21]

The third and last group includes later treaties and agreements, touching upon the general principles of leaving the country. Broadly speaking, the provisions relative to departure from the U.S.S.R. correspond with the national law of the Soviet Union found in the Union Statute on Entry and Departure, of 1925.[22] The freedom of foreigners to leave the Soviet Union is usually not restricted in any way, provided that all technicalities have been complied with.[23] In this connection, notice must be taken of the fact that although this Statute of 1925 states that foreigners, under such conditions, cannot be refused permission to leave Russia, even if their departure might prove politically unsafe for the Soviets, the possibility of such refusal cannot be entirely excluded.[24]

Transit and Sojourn

Certain international agreements have been entered into by the Soviets relating not to entry into or departure from the countries of the respective parties, but to freedom of movement within, and transit through their territory. Mention may be made of the Agreements between the R.S.F.S.R. and Persia of February 26, 1921, and between the R.S.F.S.R. and Finland of October 28, 1922; and of the Treaties between the U.S.S.R. and Sweden of March 15, 1924, and between the U.S.S.R. and Japan of January 20, 1925. While those with Persia and Japan provide for the right of free movement within the territory of the other

[21] *Cf.* Art 13 of the Treaty between the Azerbeidzhan S.S.R., Armenian S.S.R and Georgian S S R. (with the participation of the R.S.F.S R.), and Turkey of October 13, 1921 (*Sborn. Deistv. Dogov*, III, 1922, p. 53).

[22] *Supra*, p. 126.

[23] Failure to secure a visa, the non-payment of taxes and the pending of court proceedings, are conditions under which the right of departure may be refused. (Instructions of the People's Commissariat for the Interior of Jan. 29, 1923, No. 25, *Bulleten' N.K.V.D. R.S.F.S.R.*, 1923, No. 21).

[24] Egor'ev and others, *as cited*, p. 169

Contracting Party, those with Sweden and Finland provide that no transit visas be refused to the nationals of one of the Contracting Parties when they are *en route* to a foreign country through the territory of the other Contracting Party. To quote Article 18 of the Treaty with Persia of February 16, 1921:

"In regard to the right of free movement within the other country, Persian nationals in Russia, and Russian nationals in Persia enjoy the rights given to the most favored state, with the exception of those in the Union with Russia [R.S.F.S.R.]." [25]

Article 5, clause 1, of the Convention between the U.S.S.R. and Japan of January 20, 1925 provides:

"The subjects or citizens of each of the High Contracting Parties shall, in accordance with the laws of the country: (*a*) have full liberty to enter, travel and reside in the territories of the other, and (*b*) enjoy constant and complete protection for [the safety of] their lives and property." [26]

To quote Article 1, clause 1, of the Agreement with Finland:

"Russian officials, as well as private citizens, have the right of free transit through the Pechenga District, now belonging to Finland, when on their way either from Russia to Norway, or from Norway to Russia, provided that the routes enumerated in Article 5 of the Agreement are followed. The above provision, however, does not apply to troops, or to any unit of a military character." [27]

Special Problem in Boundary Zones

Closely connected with the general right of persons to enter or leave a foreign country is the problem of the crossing of the frontiers by inhabitants of the zones adjacent to such boundaries. Boundary zones on one side of the international line are very often, if not always, closely connected by common economic interests with those on the other side. This necessitates a simplification of the rules relative to crossing such boundaries for the benefit of the local inhabitants. Usually this is achieved by special conventions between the neighboring states. The attitude of the Soviets in this respect does not differ from that of other

[25] *Sborn. Deistv Dogov*, I, 1924, p 152, IX, 384, L.N.T.S.
[26] *Ibid*, III, 1927, p 11; XXIV, 32, L.N.T.S.
[27] *Ibid*, I–II, 1928, p 206; XIX, 200, L.N.T.S. *Cf.* Art 2 cl 6, of the Treaty with Sweden of March 15, 1924 (*ibid*, I–II, 1928, p 268; XXV, 252, L.N.T.S.).

states, and is manifested in the provisions of Article 6 of the Decree of the Central Executive Committee of the U.S.S.R. of June 5, 1925:

"The manner of issuing the permits for crossing the boundaries by the permanent inhabitants of the zones adjacent to the boundary, and in exceptional cases for crossing the boundaries of the U.S.S.R. in the Orient [Near East] (upon the occasion of local fairs, etc.) is determined by agreement with the neighboring states, and by the Decrees of the People's Commissariat for Foreign Affairs." [28]

The only noticeable peculiarity in regard to the Soviet practice relative to this problem is the difference in the attitude of the Soviet authorities according to whether Oriental countries or the countries along the Soviet Western boundaries are concerned. While the crossing of the state boundaries is greatly facilitated for the local population of the countries in the Near East (Mongolia, Turkey, and Persia) [29] there are no such agreements with the states bordering the Soviet Union on the West.[30]

Public Rights

Whereas the rights and duties of individuals, whether public or private, do not ordinarily impinge upon the field of international law, they may do so. This is the case primarily when special regulations as to the exercise of their rights and the determination of their duties are established for foreigners. It occurs less frequently as a result of an effort on the part of the home state to extend its own laws and theories in this regard to its citizens abroad. The relation of the foreign individual to the state within which he is sojourning involves questions of the exercise of political rights, protection by labor laws and eligibility to state insurance, and, conversely, submission to local laws, liability to military service and to taxation, and criminal responsibility. His relations with the citizens of the state where he

[28] *Sobr. Zak i Rasp. S S S.R.*, 1925, I, p. 590.

[29] *Cf.* Treaty between the Azerbeidzan S.S.R., Armenian S S R. and Georgian S S R, and Turkey of Oct. 13, 1921 (*Sborn. Deistv. Dogov.*, I–II, 1928, p. 128), conventions between the Georgian S S.R. and Turkey of Mar 20, 1922, on crossing the state boundaries, and using the pastures (*ibid*, I–II, 1928, pp. 194 and 244, respectively); convention of the U.S S.R. with Persia of May 31, 1928 (*ibid.*, VI, 1931, p 233, CX, 343, L N.T.S.); conventions of the U.S.S R with Turkey of Aug. 6, 1928, on using pastures (*ibid*, V, 1930, p 32), and on crossing the state boundaries, of the same date (*ibid*, VI, 1931, p. 24).

[30] The Agreement of the U S S R with Roumania of Nov. 20, 1923, on the settlement of conflicts along the frontiers is political and does not suggest any special frontier problem

is residing may involve questions of his legal capacity, and of his rights as to property—including copyright and trade-marks, marriage and inheritance. Conversely, he is liable to respond in any civil procedure initiated against him.

Political

As a general rule, foreigners do not enjoy rights of a political nature, these being reserved exclusively to citizens. The Soviet law in this respect is a striking exception. All foreigners belonging to the toiling masses and residing within the territory of the U.S.S.R. enjoy all the political rights possessed by citizens of the Soviet Union. This idea was launched immediately after the November Revolution [31] and was embodied in Article 20 of the Constitution of the R.S.F.S.R. of 1918:

"Recognizing the solidarity of the laboring masses of all nations, the R.S.F.S.R. extends all political rights enjoyed by Russian citizens to foreigners working within the territory of the Russian Republic, *provided that they belong to the working class or to the peasantry not using* hired labor. . . ." [32]

The new Constitution of the R.S.F.S.R. of 1926 in principle recognized the same idea of giving political rights to foreigners of the laboring class residing in the Soviet Union, leaving it to the Union to formulate detailed rules on the matter in conformity with Article 1 of the Constitution of the U.S.S.R. Article 2 of the Statute on Union Citizenship, promulgated in 1924, repeats the provision of Article 20 of the Constitution of the R.S.F.S.R. of 1918:

"Foreign citizens residing in the territory of the U.S.S.R. for [purposes of] labor and belonging to the working classes, or to the peasantry not using hired labor, have all the political rights of citizens of the U.S.S.R." [33]

[31] Bolshevist Revolution of 1917. *Supra*, FN. 84, p 114

[32] *Sborn. Dekretov 1917–1918 gg.*, p 65. In the revised Constitution of the R.S.F.S.R of 1926, this provision was included in Art 11 (*Sobr Kodeksov R.S.F.S.R*, 4-e izd, p 5) The same wording is found also in Art. 30 of the Constitution of the U.S.S.R and in Art 11 of the Constitution of the Armenian S.S.R., the expression "political rights" being changed in the latter to "rights of citizenship" The Constitution of the White-Russian S.S.R contains no special provisions relative to political rights of foreigners, while the Constitution of the Georgian S.S.R. speaks only about the electoral rights of foreigners, and grants political rights to foreigners only upon condition that a special decree by the Central Executive Committee of the Georgian S.S.R be passed to that effect.

[33] *Sobr. Zak. i Rasp S.S.S.R*, 1924, I, pp. 202ff. The same provision is found also in Art. 6 of the Statute on Union Citizenship of 1930 (*Sobr Zak. i Rasp. S.S.S.R.*, 1930, I, pp. 620–627).

Among political rights are reckoned the right to hold public or government office, eligibility to jury service, and the exercise of the franchise. Although there is no express provision in Soviet law that aliens are eligible to hold public or government office, or to sit on juries, the expression *all the political rights of citizens* is broad enough to include them. The right to vote is expressly accorded by Note 2 to Article 64 of the Constitution of the R.S.F.S.R. of 1918:

". . . All those [foreigners] enumerated in Article 20 enjoy active and passive electoral rights." [84]

ection by r Laws

Despite the emphasis on conditions of labor, always evident in the policies of the communist authorities in Moscow, no attempt appears to have been made either to discriminate against foreigners in the application of the highly technical Labor Code of the R.S.F.S.R. of 1922,[85] or to extend its application beyond the confines of the Soviet Union. It applies to all persons residing within the territory of the U.S.S.R., irrespective of their political allegiance, but does not follow Soviet citizens abroad, and so has no effect beyond Soviet territory. Only in isolated instances can the effect of the Soviet Labor Code be traced abroad. If the Soviet Government opened a business enterprise in a foreign country, there would be nothing to prevent it from applying to its personnel Soviet labor conditions, provided they were not less liberal than those existing in the country where the enterprise was established. However, Soviet laws embody no rules to this effect. Nor is there provision for the application of the Soviet Labor Code to the personnel of the Soviet Diplomatic and Trade Missions abroad. This fact again proves the cautiousness of the Soviet Government in interfering with the national laws of countries which do not entirely indorse the Soviet political and social program.

[84] *Cf. supra*, p 133. Similar provisions are found also in Arts 20, 79, and 98 of the Constitutions of the Uk.S.S.R., Armenian S S R, and Georgian S S R, respectively. "All those enumerated in Art. 20," are "foreigners working within the territory of the Russian Republic, provided that they belong to the working class or to the peasantry not using hired labor" (*Supra*, p 133.)

[85] *Sobr. Kodeksov R.S.F.S.R.*, 4-e izd., pp. 273–307. There is no Union Labor Code. Such Codes are promulgated separately in each Union Republic The Labor Code of the R S F.S R of 1922, which is still in force, has been copied to a great extent in other Union Republics, and therefore may be considered as the law of the Union.

Among treaties referring to the general issue, reference must be made to Article 3 of the Agreement between the U.S.S.R. and Germany of October 12, 1925, which provides that the citizens of one of the Contracting Parties in the territory of the other are to enjoy complete freedom in applying their labor, and in joining or not joining labor unions and similar professional organizations (provided the by-laws of such organizations permit their belonging thereto).[36]

Right to State Insurance

Not only general social protection, but insurance as well, becomes a relation between the individual and the state in the Soviet Union, for, according to Article 1 of the Statute on State Insurance of the U.S.S.R. of September 18, 1925:

"Insurance in all its forms is a state monopoly of the U.S.S.R." [37]

It follows not only that foreign insurance companies are forbidden to engage in business in the Soviet Union, but that foreigners in the Soviet Union can insure with foreign insurance companies only upon special permission from the Soviet authorities.[38] On the other hand this provision does not exclude the right of foreigners in the U.S.S.R. to insure their property abroad, as well as that in the U.S.S.R., with the Soviet State Insurance Company. As to insurance on a person, the provision of Article 175 of the Labor Code of 1927 reads:

"Social insurance is extended to all persons engaged in hired labor, irrespective of whether they work in State, Municipal, Cooperative . . . or private organizations . . . or for private persons. . . ." [39]

The fact that no mention is made of foreigners, although foreigners may well be numbered among those in both public and private employ, permits the conclusion that, while foreigners residing in the Soviet Union, but not being employed, may or

[36] *Sborn Deistv. Dogov.*, III, 1927, p. 77, LIII, 7, L N T S

[37] Decree of the Central Executive Committee of the U S S R of Sept. 18, 1925 (*Sobr. Zak. i Rasp S.S.S.R.*, 1925, I, p 1086). *Cf.* Art 13 of the Decree of the People's Commissariat of Finances of Nov. 12, 1925 *Cf*, also Decrees of the Council of People's Commissaries of the Ukrainian S S R. of Nov 25, 1921, of the Council of Peoples' Commissaries of the White-Russian S S R of Dec 3, 1921, and of the Council of Peoples' Commissaries of the Transcaucasian S F S R of Sept. 16, 1922.

[38] Egor'ev and others, *as cited*, p. 291

[39] *Sobr Kodeksov R S F S.R.*, 4-e izd , p 300.

may not enjoy the right of insurance, foreigners who are working in the U.S.S.R. are subject to compulsory social insurance.

As to the reverse of the problem, *i.e.*, the social protection and insurance of Soviet citizens abroad, there are no Soviet laws which directly cover the situation. The Statute on State Insurance of 1925 covers only those working within the Soviet Union. Soviet citizens residing abroad enjoy no social protection from their home country. The fact, however, that the Statute of 1925 does not forbid such citizens to take advantage of the services of foreign insurance companies while abroad may well be construed as a sufficient compensation for this neglect on the part of their home government. There are, moreover, two exceptional cases in which Soviet citizens abroad receive the benefits of social protection from their home state. It is the custom to continue the payments of Soviet pensions to beneficiaries who may have removed abroad,[40] and Soviet consuls abroad are instructed to help those Soviet citizens who are in desperate need, special sums being appropriated for this purpose.[41] A joint decree of the People's Commissariat for Trade, the People's Commissariat of Finances, and the People's Commissariat for Foreign Affairs of January 8, 1924, provided for social insurance of the personnel of the Soviet Diplomatic Missions who are foreign citizens.

Duties

Corresponding to the rights of individuals *vis-à-vis* the state, are certain duties and liabilities. Some of these are inherent in the obligations of citizenship only, while others are shared by foreigners.

The general rule is that aliens are exempt from compulsory military service in all branches of the fighting forces, as well as from all compulsory military contributions, and from all exactions, in money or in kind, in lieu of personal service. But foreigners owning land may be subject to charges connected with their land, such as compulsory billeting or the like. The Soviets do not deviate in this from the general practice of other nations. The problem of the requirement of military service from for-

[40] Decree of the People's Commissariat for Labor of June 23, 1924, No. 330579 (in Egor'ev and others, *as cited*, p. 74).

[41] Circular of the People's Commissariat for Foreign Affairs of Sept. 15, 1925, No. 130 (*ibid.*, p. 75).

eigners residing within its territory is dealt with by the Soviet Government both in its laws and treaties. The earliest legislative provisions are found in the Decree of September 28, 1922.[42] Military service was not required from foreigners residing in the Soviet Republics, although it was provided that foreigners might join the Red Army as volunteers.[43] By way of exception, however, during the Civil War of 1918–1920, medical personnel residing in Russia, who had received their education in Russia, were compelled to serve in the Red Army, although they might be foreign citizens.[44] Whereas there is no specific law on the liability to military service of former Russian citizens who subsequently return to Russia, the conclusion may be reached that if their foreign citizenship had been acquired without the sanction of the Soviet authorities, the liability subsists. After the formation of the Union of S.S.R., a decree was passed on September 18, 1925, which in principle did not change the old rule[45] according to foreigners exemption from military service.

As to military contributions, and conscription for labor with the troops, the earlier laws of the component Union Republics varied greatly. In the R.S.F.S.R., the Instructions issued in 1921 relative to drafting foreign citizens for military labor provided that foreigners could be drafted, but not for work directly connected with war activities. The All-Union legislation is based upon a different principle. According to it, foreigners are exempt from military labor only when there are special treaty provisions to that effect. To quote the Decree of the Council of Peoples' Commissaries of August 24, 1923:

"1. Exempt from the mobilization of horses and other animals, carriages and harnesses are: (*a*) foreign embassies and missions, as well as persons enjoying the right of exterritoriality, in so far as the horses, etc., are for their personal use; (*b*) foreign consuls if this is agreed upon in consular conventions; (*c*) foreign citizens *if this is agreed upon in treaties to this effect.*"[46]

[42] *Cf.* also §18 of the Statute on Foreigners of the White-Russian S.S.R. of Aug. 4, 1922 (*Sobr. Uzak. i Rasp. B.S.S.R.*, 1922, par. 148)

[43] Art. 6

[44] Decree of S.T.O. (Council of Labor and Defense) of Oct. 1, 1919 (*Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1919, p. 151).

[45] *Sobr. Zak. i Rasp. S.S.S.R.*, 1925, I, pp. 849–882

[46] *Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1923, I, p. 1648. (Italics by author.)

The object of this provision is no doubt to secure similar immunity for Soviet citizens abroad.

A typical example of a treaty providing for the exemption of foreign residents, not only from military service, but from any burden of taxation or any obligation relative to the armed forces is Article 4 of the Treaty of Commerce between the R.S.F.S.R. and Great Britain, concluded in London on March 16, 1921:

"Persons admitted in conformity with this article into the territory of the other country shall be exempt during their sojourn therein from any compulsory service, civil, naval, military, or otherwise, and from any kind of taxes, either monetary or natural, which may be imposed instead of personal service. . . ."

Article 16 of the Treaty with Turkey of March 16, 1921, reads:

"To the citizens of both Contracting Parties who are in the territory of the other party shall be extended all the rights and duties resulting from the laws of the country of their sojourn, with the exception of duties of national defense, from which they are exempt." [47]

The Treaty with Persia of February 26, 1921, states in Article 18 that

". . . Persian citizens in Russia and Russian citizens in Persia are relieved from military service for the country of their sojourn and from payment of any kind of war taxes or duties." [48]

The Preliminary Agreement with Denmark, signed at Moscow on April 23, 1923, repeats almost word for word the same provi-

[47] *Sborn. Deistv. Dogov.*, I, 1924, pp. 49 and 157 respectively. See also Art. 4, Treaty with Denmark of Apr. 23, 1923 (*ibid.*, I, 1924, p. 65; XVIII, 16 L N T S.), Art. 6, Treaty with Italy of Feb. 7, 1924 (*ibid*, II, 1925, p 37); Art. 17, Treaty with Persia of Feb. 6, 1921 (*ibid.*, I, 1924, p. 152; IX, 384, L N T S); Art 2, Treaty with Sweden of Mar. 15, 1924 (*ibid*, II, 1925, p. 68; XXV, 252, L.N T S.).
The attitude of the Soviet Government towards the problem of the performance of Soviet military duty by Soviet nationals residing abroad has no international significance. Considering this problem a matter of national concern, the Soviet Government holds its citizens residing abroad subject to military service under the Soviet colors. *Cf* Decrees of Sept. 18, 1925, and Dec 1, 1922 (*Sobr. Zak. i Rasp. S.S S.R.*, 1925, I, pp. 850ff., and *Sobr Uzak. i Rasp R S.F.S.R*, 1922, I, p. 1424); Decree of July 4, 1923 (*ibid.*, 1923, I, p. 623); Decrees of Revol Milit Council of the Republic, of Nov 15, 1922, No 2566, and Instruction of Revol. Milit Council of the U S S R. of Feb. 26, 1924, No. 256. See also Arts. 2 and 81[a] of the Criminal Code of 1922, and Arts 2 and 59[4] of the Criminal Code of 1926.

[48] *Sborn Deistv. Dogov.*, I, 1924, p. 152; IX, 384 L.N.T S. *Cf* the provisions of the Treaty with Great Britain of Mar. 16, 1921, IV, 121, L.N.T.S., and with Turkey of the same date.

sion.[49] A similar exemption is accorded in the Treaty of Commerce between the U S.S.R and Sweden, signed at Stockholm on March 15, 1924.[50]

The most complete formulation of the exemption of citizens residing abroad from the military service of the country of their sojourn is found in the Treaty of Commerce and Navigation with Italy of February 7, 1924. Article 6 of this treaty stipulates that the citizens of the Contracting Parties shall be mutually relieved from any compulsory national or military service while residing in the territory of the other country entering into this agreement. Likewise:

". . . they shall be relieved from any war taxes, requisitions, or supplies, with the exception of war taxes, supplies and requisitions which in equal measure shall be imposed upon all citizens of the country as owners of immovable property. However, carriages, motor vehicles, horses, and other means of transportation on land may be subject to military . . . requisition." [51]

The Agreement between the U.S.S.R. and Germany of October 12, 1925, provides that the citizens of the Contracting Parties shall be mutually relieved both in time of peace and in time of war, from any personal military duties.[52] In view of the fact that the Soviets, as shown, exempt foreigners from compulsory military service in the U.S.S.R., and that the exemption of foreigners from military service in the country of their sojourn is accepted as a general rule, the assumption is safe that the Soviet Government would probably extend protection to its citizens in case they were drafted for military service in a foreign country, even if no special agreement guaranteed their exemption from such service.

Submission to Local Laws

Among the duties toward the state which are shared by foreigners and citizens are general submission to the laws of the country, and payment of taxes. In addition, there is criminal responsibility. As to submission to the laws of the country of their sojourn, it is a commonplace that foreigners owe a temporary obedience to the state in which they reside. The measure of

[49] Art. 4 (*Sborn. Deistv. Dogov*, I, 1924, p. 65; XVIII, 16, L.N.T.S.)
[50] Art 2, clause 4 (*ibid*, I, 1924, p 68; XXV, 252, L N.T.S.)
[51] *Ibid*, I–II, 1928, p 221.
[52] Art. 7 (*ibid*, III, 1927, p. 78; LIII, 7, L N T S.).

this obligation may vary with the relative permanence of the sojourn. This is the rule laid down in international law, and the Soviets have adhered to it.

All persons residing within the territory of a given state, irrespective of their national allegiance, are ordinarily subject to taxation by that state. In the Soviet Union the Statute on the Income Tax, of October 29, 1934, including foreigners in the following terms:

"1. With the exceptions enumerated in Article 2, the state income tax is levied upon: (*a*) All persons having independent incomes and residing in the territory of the U.S.S R.; (*b*) Juridical persons whose administrative offices are in the territory of the U.S.S.R.; (*c*) Representative branches of foreign firms allowed to trade in the territory of the U.S.S.R." [53]

A new Statute on the Income Tax was promulgated on September 24, 1926, according to Article 1, clause "a" of which

"1. [The following persons] are subject to the payment of the State income tax: . . .

"(*a*) natural persons residing either in the territory of the U.S S.R. or abroad who have independent income from sources situated in the U.S.S.R., irrespective of their citizenship." [54]

The latest Soviet Statute on the State Income Tax, promulgated on September 2, 1930, repeats in substance the provisions of the law of 1926.[55] The rule established by these statutes is clear: foreigners are subject to the state income tax when they have independent income derived from sources in the U.S.S.R., irrespective of whether they themselves reside in the U.S.S.R. or abroad. Thy are not taxed on this score, however, if they merely reside in the U.S.S.R., their entire income being derived from sources outside Soviet territory.

The fact that an income tax is imposed on the basis of juris-

[53] *Sobr. Zak. i Rasp S S.S.R.*, 1924, I, p. 273. *Cf* the provision of Art. 11 of the Statute on Foreigners in the White-Russian S.S R: "Foreigners like Ukrainians are levied with permanent as well as incidental taxes both personal and property." (*Ibid*, 1922, par. 148.)

[54] *Ibid*, 1926, I, p. 1166.

[55] *Ibid*, 1930, I, p 888. The word "citizen" is substituted for the term "natural person," but the context suggests that the expression "citizen" (*grazhdanin*) is used as a substitute for "comrade."

diction over the property whence the income is derived, irrespective of the whereabouts of the individual to whose benefit it accrues, may result in national laws of taxation being projected beyond the state frontiers. This holds as well for citizens as for foreigners. All Soviet citizens must pay taxes on the income from their property in the U.S.S.R., irrespective of the country in which they reside. Such was the provision of Paragraph 1 of the Instructions to the Statute on Income and Property Taxes, of November 12, 1923.[56] The Statutes of 1926 and 1930[57] perpetuate this provision. The fact that the income tax laws of a state follow its citizens beyond the limits of its territory, means that such citizens residing abroad, who have sources of income at home, may be subject to double taxation, by their own country and by the country of their sojourn. In order to avoid such an eventuality, agreements have been entered into between the U.S.S.R. and foreign states. Thus, Article 2 of the Fiscal Agreement of the Economic Treaty between the U.S.S.R. and Germany of October 12, 1925, provides:

"With a view to avoiding double taxation, the following special provisions shall be applied in the fiscal treatment accorded to nationals of the two Contracting Parties, including taxable persons placed on the same footing as nationals. . . .

"(*a*) Land, buildings, rights equivalent to the possession of land, mortgage debts and income (yield) derived therefrom, shall only be subject to direct taxation in the State in which the immovable property in question is situated.

"(*b*) The exercise of a trade or industry, the capital employed therein, and the income (yield) from such trade or industry, shall only be subject to direct taxation in the State in which an establishment is maintained . . ." [58]

Another illustration of the same nature is found in the provision of Article 9 of the Treaty of Commerce and Navigation with Italy of February 7, 1924, which in part reads.

"Art. 9. In order to avoid double taxation, both Contracting Parties undertake to settle by means of an agreement all matters connected with

[56] *Sobr. Uzak. i Rasp R S F S R.*, 1923, I, pp. 1944–1948

[57] *Sobr. Zak i Rasp S.S.S.R.*, 1926, I, p. 1166, and *ibid.*, 1930, I, p. 888, respectively.

[58] *Sborn. Deistv. Dogov*, III, 1927, p. 100; LIII, 7, L N T S

taxation, duties and other payments which may be levied on the companies of one country in the territories of the other." [59]

The Soviet Government has also resorted to treaties to secure its citizens abroad from discriminatory taxation. Article 2 of the Treaty between the U.S.S.R. and Sweden of March 15, 1924, provides that Soviet citizens in Sweden and Swedish citizens in the Soviet Union shall be taxed neither higher nor otherwise than the citizens of the country of their sojourn.[60] Moreover, the most-favored-nation clause, securing relief from discriminatory taxes when more favorable treatment has been accorded the nationals of any third country is included in each of the above treaties.

Having established a certain social-economic and political order in a community, the state considers the existing order compulsory for everybody residing within its territory, be they its own citizens or foreigners. At the same time, it refrains from interfering with the social order of other states. However, although leaving to its nationals freedom of action outside its territorial jurisdiction in their civil activities, the state does not remain indifferent to their criminal actions abroad.

In regard to the criminal jurisdiction of the Soviets over foreigners, the Criminal Codes of the R.S.F.S.R. of 1922 and 1926 must be compared.[61] Of the provisions of the former, Articles 1, 3, and 4 are pertinent.

To quote them:

"Art. 1. The application [of the provisions] of the Criminal Code is extended to all crimes committed in the R.S.F.S.R. both by [Soviet] citizens and foreigners if the latter do not enjoy by their diplomatic status the right of extraterritoriality."

"Art. 3. The applicability of the Code is extended also to foreigners arriving in Russia who have committed [even] outside of the territory of the [Soviet] Republic any crime against the government and military strength of the R.S.F.S.R."

"Art. 4. Exemptions from Art. 3 of the Criminal Code may be had

[59] *Sborn. Deistv. Dogov.*, II, 1925, p. 38.
[60] *Ibid.*, II, 1925, p 68; XXV, 252, L.N.T S.
[61] There is no Union Criminal Code. The Union Republics have their own Criminal Codes, which in most cases are closely copied from that of the R.S.F.S.R. For the purpose of the present study, therefore, the Codes of the R.S.F.S.R. may well serve as the basis for the analysis of this problem for the whole Union

only in conformity with special agreements entered into by the R.S.F.S.R. with foreign states." [62]

Article 4 was put in evidently because of the fact that most of the international agreements entered into by the Soviets before the promulgation of the Code of 1922, touching upon the status of foreigners, provided for exemption from criminal jurisdiction of persons enjoying diplomatic immunity; or, as was the case in the Treaties of Peace with the Baltic States, of war prisoners who were to be repatriated in accordance with those treaties.

After the formation of the Union foreigners were made liable only for offenses committed within the jurisdiction of the U.S.S.R. Article 1 of the Decree of the Central Executive Committee of the U.S.S.R. of October 31, 1924, promulgating the Fundamental Principles of the Criminal Legislation of the U.S.S.R. and of the Union Republics, reads:

"All persons in the U.S.S.R., except foreigners who enjoy the right of extraterritoriality, are responsible for offenses committed in the territory of the Union of S.S.R. according to the laws of the place where the crime has been committed." [63]

In the Criminal Code of the R.S.F.S.R. of 1926, the provision of Article 3 of the Code of 1922 is no longer found. In its stead, the Code of 1926 in Article 4 follows the rule laid down in the federal Decree of October 31, 1924:

[62] *Cf.* the Decree of the Council of Peoples' Commissaries of June 30, 1921 (*Sobr. Uzak i Rasp R.S.F.S.R.*, 1921, p. 303). *Cf.* also The treaties with Denmark, of April 23, 1923 (XVIII, 16, L.N.T.S.); with Norway of Sept. 2, 1921 (VII, 294, L.N.T.S.); with Italy of Dec. 26, 1921; with Persia of Feb. 26, 1921 (IX, 384, *L.N.T.S.*); with Turkey of Mar. 16, 1921, with Bukhara of Mar. 4, 1921; with Mongolia of Nov. 5, 1921; with Khorezm of Sept. 13, 1920; the Treaties of Peace with Estonia of Feb. 2, 1920 (XI, 30, L.N.T.S.), with Latvia of Aug. 11, 1920 (II, 196, L.N.T.S.), with Lithuania of July 12, 1920 (III, 106, L.N.T.S.); with Poland of Mar. 18, 1921 (VI, 52, L.N.T.S.); with Finland of Oct. 14, 1920 (III, 6, L.N.T.S.), also the Agreements with Estonia of Aug. 19, 1920, with Finland of Aug. 12, 1922 (XIX, 106, L.N.T.S.); with Germany of Apr. 19, 1920 (II, 64, L.N.T.S.), and May 6, 1921 (XII, 178, L.N.T.S.), with Austria of July 5, 1920, with Hungary of May 21, 1920, with Great Britain of Feb. 12, 1920 (I, 264, L.N.T.S.); with France of Apr. 20, 1920, with Italy of Apr. 27, 1920, and with Belgium of Apr. 20, 1920, also the Convention with Turkey of Mar. 28, 1921 (Appendix XXIV). *Cf.* also the Circulars of the People's Commissariat of Justice, No. 27 (Oct. 18, 1920), No. 32 (Oct. 29, 1920), No. 34 (Sept. 24, 1922).

[63] *Sobr. Zak i Rasp S.S.S.R.*, 1924, I, p. 372. These principles actually were nothing but a draft of the Criminal Code which was promulgated in 1926 and is in force now.

"Foreigners who commit crimes in the territory of the U.S.S.R. are responsible according to the laws of the place where the crime is committed." [64]

An exemption to this rule is made as to foreigners enjoying the right of extraterritoriality.

From a comparison of the Codes of 1922 and 1926, it appears that up to 1926 the Soviet authorities were inclined to accept the theory prevailing in most Continental states whereby the jurisdiction of their national courts extended over foreign criminals within Soviet territory even for crimes committed abroad.[65] The omission of the provisions of Article 3 of the Code of 1922 from the Code of 1926 suggests that since 1926 the Soviet Government has formally adhered to the theory prevailing in England, the United States of America, Portugal and Denmark, according to which the territorial extent of criminal jurisdiction is so limited that a state has no jurisdiction over a foreigner who has committed a crime abroad.

So much for the Soviet laws relative to the criminal responsibility of foreigners in the U.S.S.R. The criminal jurisdiction of the Soviet authorities does not extend over Soviet nationals abroad, this being in conformity with the general rule that a state may exercise legal authority only within its own territory. Thus, when in 1926 the new Criminal Code of the R.S.F.S.R. was promulgated, Article 2 provided that the provisions of the Code had effect as to Soviet citizens, in cases where the offense had been committed outside of the Soviet territory, only if the person charged with the crime was arrested in the R.S.F.S.R.[66]

apitulations

In this connection a few words are pertinent regarding the attitude of the Soviet authorities towards the régime of capitulations. The Soviet Government condemned this régime, which here means extraterritorial rights, once and for all, and refused to consider this principle in their international relations with other states. The obvious reason for this renunciation was the com-

[64] *Sobr. Kodeksov R.S.F.S.R.*, 4-e izd., p. 653. *Cf.* Art. 160 of the Code of Criminal Procedure of the R.S.F.S.R. of 1923 (*ibid.*, p. 956).

[65] *Cf.* Article 7 of the French *Code d'Instruction Criminelle;* Arts. 10 and 4 of the Codes of Criminal Procedure of Belgium and Italy respectively; and Art. 4 of the Criminal Code of Germany.

[66] *Sobr. Zak. i Rasp. S.S.S.R.*, 1924, p. 372.

munist theory that the régime of "capitulations" was not consistent with the free national development of a country or with the principle of sovereignty. The best illustrations of this are to be found in the treaty practice of the Soviets. Contrary to the tradition of the Empire in its relations with Eastern countries, Article 16 of the Soviet Treaty with Persia of February 26, 1921, provided:

"By virtue of the communication from Soviet Russia dated June 25, 1919, with reference to the abolition of consular jurisdiction, it is decided that Russian subjects in Persia and Persian subjects in Russia shall, as from the date of the present Treaty, be placed upon the same footing as the inhabitants of the towns in which they reside; they shall be subject to the laws of the country of their residence, and shall submit their complaints to the local courts." [67]

In Article 7 of the Treaty with Turkey of March 16, 1921, the Government of the R.S.F.S.R. renounced all the privileges which it had hitherto enjoyed in respect to extraterritoriality.[68] On November 5, 1921, a Treaty was signed with Mongolia, Article 8 of which states that

". . . the legal jurisdiction of each of the Contracting Parties shall be extended to the citizens of the other Contracting Party residing in its territory, both in civil and criminal cases. . . ." [69]

Article 12 of the Agreement with China, May 31, 1924, states that the Government of the U.S.S.R. agrees to renounce its extraterritorial rights and consular jurisdiction. Supplementary to this was a special Declaration signed on the same day to the effect that in China

". . . the citizens of the Union of Socialist Soviet Republics shall be entirely subject to the jurisdiction of Chinese authorities. . . ." [70]

Extradition

A few words remain to be said about the Soviet attitude towards the extradition of criminals. In this matter, Soviet law and practice are in conformity with the principles generally observed. The Soviet Government extradites criminals only on the basis of special conventions, or lacking such, upon special consent

[67] *Sborn. Deistv. Dogov*, I, 1924, pp 148ff ; IX, 384, L.N.T.S
[68] *Ibid.*, I, 1924, pp. 155ff.
[69] *Ibid.*, I, 1924, p. 115.
[70] *Ibid.*, II, 1925, pp. 19 and 21, respectively; XXXVII, 176, L.N.T.S.

granted for each individual case. Article 16 of the Decree of the Central Executive Committee of the U.S.S.R. of October 31, 1924, reads in part:

"Extradition of persons requested from the Government of the U.S.S.R. by the Governments of foreign states is permissible only in the instances and in the manner established by treaties, agreements and conventions between the U.S.S.R. and foreign states, and upon special agreements of the Government of the U.S.S.R. with foreign Governments, as well as by special All-Union Laws." [71]

Contrary to the generally established rule, the Soviet law does not refuse extradition of Soviet citizens, which fact may justly be considered consistent with the communist ideas of internationalism as opposed to the extreme nationalistic sentiments of the non-communist world.

As to the extradition of persons for political offenses, the Soviet Government grants the right of asylum and does not extradite foreigners seeking refuge in the Soviet Union. Article 21 of the Constitution of the R.S.F.S.R. of 1918 reads:

"The Russian Socialist Federal Soviet Republic grants the right of asylum to all foreigners persecuted for their political or religious offenses.[72]

The Decree of the All-Russian Central Executive Committee of March 28, 1918, reads:

"Every foreigner, persecuted in his country for political or religious crimes, upon arrival in Russia shall enjoy there the right of asylum. No extradition of such persons can take place even upon the request of the states whose citizens they are." [73]

Although these quotations do not suggest rules of extradition differing from those followed by the non-communist states, attention must be directed to the fact that in actual practice the Soviets give a much wider interpretation to the words "political crimes," which they define in a way hardly to be distinguished

[71] *Sobr Zak. i Rasp. S.S.S.R.*, 1924, I, p. 384 *Cf* FN 145, *infra*, p. 277

[72] The same provision was repeated in Art. 12 of the Constitution of the R.S.F.S.R of 1924 (*Sobr Kodeksov R.S.F.S.R.*, 4-e izd., p. 5), and in Arts. 12, 14 and 31 of the Constitution of the Armenian S.S.R., White-Russian S.S.R., and U.S.S.R. respectively

[73] *Sborn. Dekretov 1917–1918 gg.*, p. 39.

from non-political crimes. The latter they define as "socially dangerous acts," *i.e.*,

". . . any act or lack of action *aimed against the Soviet régime or to destroy the legal order* established by the Workers' and Peasants' authority during the period transitory to the communist social order."

Political (counter-revolutionary) crime is defined as:

". . . Every act aimed to *overthrow, undermine, or weaken the authority of the workers' and peasants' soviets . . . or to undermine or weaken . . . the fundamental economic, political and national victorious achievements of the proletarian Revolution.*

"In virtue of the international solidarity of all toiling masses such actions will be recognized as counter-revolutionary [political crimes] when they are aimed against any other state of working masses, even if the latter is not a part of the U.S.S.R.[74]

As a consequence, the practice of the Soviets in regard to extradition must differ from that of states where the interpretation of political crimes has preserved its conservative meaning.

Private Rights

Most of the problems involving relations of foreigners with individuals of the state where they are residing fall within the field of Private International Law, and are to be treated in an entirely separate study. Hence only a brief analysis of the Soviet laws and international practice relating to the legal capacity of foreigners, and to their rights regarding property, marriage, and inheritance will be made here.

Legal Capacity

The legal capacity and competence of foreigners in the R.S.F.S.R. are guaranteed by Article 11 of the Constitution of the R.S.F.S.R. of 1924, and by Article 8 of the Introduction to the Civil Code of the R.S.F.S.R. of 1922.[75] The former grants to foreigners residing in the Soviet Union, who belong to the proletariat and reside there for laboring purposes, political rights. That they enjoy all civil personal rights may be deduced from the wording of the latter:

[74] *Sobr. Kodeksov R S F.S.R.*, 4-e izd, pp. 654 and 665, respectively. (Arts. 6 and 58) (Italics by author.)

[75] *Cf.* Art 8, cl 1, of the Provisional Agreement between the R.S F.S R. and Ukrainian S.S R, and the Austrian Republic of Dec 7, 1921:

"In regard to their person and property, to the Russian and Ukrainian citizens residing in Austria, shall be applied the rules of international law and general Austrian laws." (*Sborn. Deistv. Dogov.*, III, 1922, p. 31.) (Italics by Author.)

"The rights of citizens of foreign states with which the R.S.F S.R. has entered into one or more agreements are regulated by these agreements. In so far as the rights of foreigners [76] are not provided for by agreements with their respective governments or by special laws, *the rights of such foreigners* to free movement in the territory of the R.S.F.S.R., to select professions, to acquire property rights in buildings and land *may be limited* by the duly authorized central organs of the government of the R.S.F.S.R. with the consent of the People's Commissariat for Foreign Affairs."

The provisions of this article, which have been copied in the civil codes of most of the component republics of the Soviet Union, evidence that, unless specifically protected by treaties, or limited by Soviet laws, the civil rights of foreigners in the Soviet Union are the same as those enjoyed by Soviet citizens. From the general wording of these articles, it may be concluded that foreigners also have the right to appear in court.

Of other Soviet laws relative to foreigners mention may be made of the Ukrainian Statute on Foreigners of March 28, 1922, and the similar statute of the White-Russian S.S.R. of August 4, 1922. Article 4 of the former reads:

"All foreigners in the Ukrainian S.S.R. while subject to the Ukrainian laws and state authority, as are the Ukrainian citizens, have at the same time the rights and duties of Ukrainian citizens, with the differences established by the present statute." [77]

The next ten articles of this Code enumerate the rights and duties of foreigners in the Ukraine, which are the same as for natives and include access to the courts, rights to own immovable property, the right to enter into contracts, responsibility for criminal and political offenses, the duty to pay taxes, etc. The "differences," *i.e.*, exceptions to this, referred to in Article 4, are exemptions from military service, and the exemption of foreign diplomatic and consular officers from the above rules. It may be noted that while placing foreigners on a par with Soviet nationals

[76] The term used in the original excludes the conception of juristic persons.
[77] *Sobr. Usak. i Rasp. R.K.P.Uk.*, 1922, par. 237. Art. 17 of the White-Russian Statute of 1922 is the same in substance. *Cf.* also Decree No. 4 of the Revolutionary Committee of the Georgian S.S.R. of Aug. 8, 1921, and the Decree of the Central Executive Committee of the Transcaucasian S F.S.R. of Apr. 5, 1923, which superseded it. (Egor'ev and others, *as cited*, p. 273.)

in respect to their civil rights, the Soviet laws secure all these rights only to physical persons, not to foreign firms or other juridical persons. In regard to the latter, special Soviet laws have been promulgated, regulating the scope of their rights.

Summarizing the Soviet national laws in respect to the general civil rights of foreigners in the Soviet Union, it is clear that at least in principle the civil rights secured to foreigners in the Soviet Union are greater than is usual in non-communist states.

The problem of the legal capacity of foreigners is touched upon also in Soviet treaties, particularly in economic and commercial agreements. As a rule the provisions relative to the matter under discussion in these agreements are drawn in general terms, providing that the principle of the most-favored nation be applied in case special privileges are granted to nationals of a third state by one of the Contracting Parties.[78] An interesting specific provision of the Soviets in respect to the rights of foreigners to select their profession is the provision of Article 4 of the Soviet Treaty with Italy, which reads in part:

[78] *Cf* the Treaties with the Baltic States, Germany, Denmark, Sweden, Mongolia, and Turkey. As an illustration of their provisions, Art 4 of the Treaty of Rapallo with Germany of Apr. 16, 1922, and Art 4, par 2 of the Treaty with Denmark, signed on Apr 23, 1923, may be quoted respectively

"Both Governments have furthermore agreed that the establishment of the legal status of those nationals of the one Party that live within the territory of the other Party, and the general regulation of mutual commercial and economic relations, shall be *affected on the principle of the most-favored nation* This principle, shall, however, not apply to the privileges and facilities which the Russian Socialist Federal Soviet Republic may grant to a Soviet Republic or to any State which in the past formed part of the former Russian Empire"

"Persons admitted to the respective territories for the purposes of carrying on trade, etc, are entitled to enter into any sort of commercial, credit and financial transactions in connection with the trade under this Agreement in accordance with the laws of the country. They shall enjoy the same protection, rights, privileges and facilities, including the right to compete for concessions, to rent factories, etc, as are granted to nationals of any other country. In this respect Denmark shall, however, not be entitled to claim the special rights and privileges accorded by Russia to a country which has recognized or may recognize Russia *de jure*, unless Denmark is willing to accord to Russia compensation corresponding to that of the country in question, due regard being taken to clause 4 of the Danish Law of May 31, 1922." (*Sborn. Deistv. Dogov.*, I, 1924, pp. 59, 65 respectively, XIX, 248, L N.T.S, and XVIII, 16, L N.T S, respectively)

Separately stand the Provisional Treaty with Czechoslovakia of June 5, 1922, and the *Convention with Japan of Jan 20, 1925* While in the former the nationals of the Contracting Parties are mutually granted "general civic rights," in the latter the civic rights are granted to "the widest possible extent." (*Ibid.*, I, 1924, p 190, and *ibid*, III, 1927, p. 11; XXXIV, 32, L.N T.S. for Convention with Japan.)

"They [the citizens of the Contracting Parties] shall also enjoy complete freedom in applying their labor and shall not be compelled to join professional organizations." [79]

Article 5 of the Treaty of Commerce and Navigation with Italy of February 7, 1924, provides in part that "the nationals of the Contracting Parties shall have free access to the courts of all instances and of all jurisdictions to protect their rights or themselves." [80] Article 2, clause 3, of the Commercial Agreement with Sweden of March 15, 1924, reads:

"Citizens and corporations of each of the Contracting Parties shall have the right, under condition of complying with the laws in force, to appear before the courts as plaintiffs or defendants, and to apply to the authorities of the other Party." [81]

In speaking of the property rights of foreigners under the Soviets, it must be borne in mind that all land is owned by the state. This does not mean, however, that all property commonly referred to as "real" or "immovable" is so owned.[82] Any reference to rights of foreigners in regard to immovable property must be interpreted as excluding either the right of *ownership*, as to land, or, if ownership be under consideration, then *land* must be excluded from the connotations of immovable property.

As regards property which may be privately owned, foreigners and citizens are on an equal footing. Following the generally accepted principle the Soviets apply the doctrine *lex rei sitæ* to property within their territory. The Statute on Foreigners of the Ukrainian S.S.R. in Article 7 provides:

"The rights and duties of foreigners in regard to property, both personal and immovable, in the Ukrainian S.S.R. is regulated by the laws of the Ukrainian S.S.R." [83]

[79] *Sborn Deistv Dogov.*, II, 1925, p. 36.
[80] *Ibid*, I–II, 1928, p. 221.
[81] *Ibid*, II, 1925, p. 68; XXV, 252, L N T S
[82] Art. 21 of the Civil Code of the R.S F.S.R. reads: "The land is owned by the State and cannot be the object of private transactions Possession of the land is allowed only by right of usufruct.
"Note. With the abolition of the right of ownership of land, the division of the property into movable and immovable is discontinued." (*Cf*, however, Art. 7 of the Ukrainian Statute on Foreigners, *infra*.) Art. 53 states: "The land, subsoil, forests, waters, railroads and rolling stock, as well as flying machines, are the property of the State exclusively." Article 54 provides that privately owned property may include *buildings* which have not been nationalized. (*Sobr. Kodeksov R.S.F S.R*, 4-e izd, pp. 418 and 421 respectively.) (Italics by author.)
[83] The wording of Art. 17 of the White-Russian Statute is similar.

It is in reliance upon this principle that the Ukrainian Government justifies its acts of requisition and confiscation of the property of foreigners. To quote Article 12 of the above Statute:

"The requisition or confiscation of all kinds of property belonging to foreigners is allowed only in conformity with the laws in force in the Ukrainian S.S.R." [84]

There are no similar provisions in the Statute of the R S.F.S R., which fact, however, is not conclusive evidence that this principle is not applied there.

The treaty practice of the Soviets is in consonance with their national laws. Of the earlier treaties, Article 8, clause 3, of the Treaty with Austria of December 7, 1921, reads:

"The Russian and Ukrainian Governments guarantee the inviolability of all property taken into Russia or the Ukraine or acquired in those countries by Austrian nationals who enter Russian or Ukrainian territory for purposes of trade under the terms of this Agreement, and in conformity with passport regulations, provided that the Austrian nationals in question acquire such property and use it in accordance with the special agreements concluded with the competent authorities of the Russian Socialist Federal Soviet Republic and the Ukrainian Socialist Soviet Republic. The inviolability of this property shall be assured by special letters of safe-conduct issued by the Russian or Ukrainian Governments, provided that the holder of the letter of safe-conduct is not held responsible for any claims resulting from legal transactions entered into with the Russian Socialist Federal Soviet Republic or the Ukrainian Socialist Soviet Republic after the conclusion of the present agreement." [85]

The problem of the property rights of Soviet citizens abroad has not properly any bearing upon that of foreigners within Soviet territory. Peculiar circumstances, however, lend significance to the Soviet attitude towards Soviet citizens abroad in

[84] *Supra*, p. 148.

[85] *Sborn. Deistv. Dogov*, I, 1924, p 37. The mutual effect of this provision is secured by the wording of clause 1 of this article This problem is treated similarly in Art 8 of the Treaty with Germany of May 6, 1921 (*ibid*, pp. 55–56; VI, 268, L N T.S). *Cf.* also Art. 11 of the Treaty with Great Britain of Mar 16, 1921 (IV, 128, L N T S.); Art 4 of the Preliminary Agreement with Denmark of Apr. 23, 1923 (XVIII, 16, L N T S); Art 4 of the Provisional Agreement with Norway of Sept. 2, 1921 (VII, 294, L N.T.S); Arts 18–19 of the Provisional Treaty with Czechoslovakia of June 5, 1922, Art. 10 of the Treaty of Commerce with Italy of Feb 7, 1924, and Art 2 (cl 5) of the Treaty of Commerce with Sweden of Mar 15, 1924 (XXV, 252, L N T S).

this respect. As there is no right of private property in land in the Soviet Union, the theory was advanced by the communist authorities that a Soviet citizen should enjoy no right to possess such property abroad. Having adopted, however, the principle of *lex rei sitæ* as governing the rights of foreigners to property within its boarders,[86] the Soviet Government was forced to concede the application of the same principle by other states. Thereupon a series of Circulars was issued by the People's Commissariat for Foreign Affairs of the R.S.F.S.R., and, after the formation of the Union, by the Union People's Commissariat for Foreign Affairs setting forth that Soviet citizens abroad could not be prevented from enjoying this right.[87]

Thus, if the laws of the country where a Soviet citizen has property are more liberal in regard to property rights than those of the Soviet Union, the Soviet citizen is entitled both to enjoy such rights and to have diplomatic or consular protection thereof. An interesting limitation upon such protection, however, is found in the Circular of the People's Commissariat for Foreign Affairs of the R.S.F.S.R. of April 12, 1922. Among other things it says:

"Thus, if the local laws admit property rights, the fact that our Government does not recognize such rights cannot serve as an excuse for not extending the protection of such rights [to Soviet citizens] through our Representatives Plenipotentiary or consuls, in the routine of protecting the legal rights of Russian [*sic*] citizens in general.

"Such is the general rule. However, the limits to which the protection of such rights can extend, are to be determined by the *general principles of the legal philosophy of the Soviet State.* When the claims and actions, even if they are legal according to the laws of the country of sojourn, are in contradiction with the theories prevailing in the R.S.F.S.R., in regard to the *limits of the permissible,* they cannot be accorded protection by the Soviet diplomatic agencies. This must be left subject to special evaluation [consideration] in each individual case." [88]

[86] *Supra,* p. 150.

[87] Circulars of the People's Commissariat for Foreign Affairs of the R.S.F.S.R. of Apr 12, 1922, No. 12, and July 13, 1922, No. 51; Circulars of the People's Commissariat for Foreign Affairs of the U.S.S.R. of Mar. 23, 1925, No. 51 and Oct. 23, 1925, No. 329 *Cf.* also Circulars of the People's Commissariat for Justice of the R.S.F.S.R. of June 6, 1923, No. 144, and of Sept. 23, 1933, No. 194. (Egor'ev and others, *as cited,* pp 186ff.)

[88] *Ibid.,* p. 187. (Italics by author.)

Unfortunately, this circular does not give any explanation as to what the "limits of the permissible" are. It may be inferred that in case a Soviet citizen abroad is engaged in business and is exploiting hired labor, he would have difficulty in getting protection from the Soviet diplomatic or consular agencies in case of need. However, the Circular of the People's Commissariat for Justice of the R.S.F.S.R. of September 26, 1923, reads in part:

"The property rights of citizens of the R.S.F.S.R. [abroad] which they may exercise in conformity with the laws of the country of their sojourn, are enjoyed in conformity with those laws; *any hindrance of free realization of these rights would result in inexcusable enrichment of foreigners at the expense of Russian citizens.*" [89]

Intangibles

There are certain intangible property rights such as copyrights, patents, and trademarks. The principle adopted by the Soviets is that the copyright belongs to the author, irrespective of his nationality. In accordance with this, the benefit of the copyright may accrue to foreigners in the Soviet Union on an equal footing with Soviet citizens, although there are no express provisions regarding the right of foreigners to take out copyrights. Prior to the formation of the Union, the Soviet law on copyrights was inclusive. The Decree of the All-Russian Central Executive Committee of the R.S.F.S.R. of May 22, 1922, on Fundamental Private Property Rights provided:

"II. All citizens not limited in their legal capacity by decrees of the courts, enjoy the following property rights and the right to their protection in the courts: . . .

"5. Rights to their inventions, copyrights, trademarks . . . within the limits established by special laws." [90]

Although there is no mention of the right of foreigners in this regard, it may be assumed by deduction from the general principle laid down in Article 11 of the Constitution of the R.S.F.S.R. of 1924 [91] that foreigners, at least of the laboring classes, enjoyed this right equally with Soviet citizens.

Since the formation of the Union, this matter has been gov-

[89] Egor'ev and others, *as cited*, p. 190. (Italics by author.)
[90] *Sobr. Uzak i Rasp R.S.F.S.R.*, 1922, I, pp 571–572.
[91] *Sobr. Kodeksov R.S.F.S.R.*, 4-e izd., p 5.

erned by the Decree of January 30, 1925, which is more explicit. To quote Article 1 of this Decree:

"The copyright on works in the U.S.S.R. either published or still in manuscript form . . . belongs to the author or his legal successors, irrespective of nationality.

"The copyright on works either published abroad . . . or found there in manuscript form . . . is recognized in accordance with the conditions agreed upon in conventions concluded by the U.S.S.R. with the respective states." [92]

The fact that up to the present there have been no such agreements signed by the Soviet Government leaves the problem of copyright in this respect undetermined.[93] Of particular interest for international law are the provisions of Article 4, according to which translation of a publication into a foreign language does not constitute a violation of the copyright, even if it be made and published by one not the author.

The patent rights of foreigners in the R.S.F.S.R. were originally found in the above-mentioned Decree of May 22, 1922, on Fundamental Private Property Rights, which as shown, provided that the limits of such rights were to be established by special laws. No such laws appear to have been published, however, prior to the formation of the Union. On September 12, 1924, the Central Executive Committee and the Council of Peoples' Commissaries of the U.S.S.R. issued a joint Decree, according to Article 5 of which all foreigners were to enjoy equal rights with Soviet citizens in regard to patents:

"*Foreign citizens in regard to patents enjoy equal rights with citizens* of the U.S.S.R." [94]

As was the case with copyrights, the Soviet Union has so far entered into no treaties on patent rights.

The problem of trademarks properly falls within the province of private international law, they being mainly for the protection of the industrial rights of juristic persons. The earlier Soviet

[92] *Sobr. Zak. i Rasp. S S S.R*, 1925, I, p. 118.

[93] Art. 18 of the Treaty of Commerce and Navigation with Italy of Feb. 7, 1924, provides for a special convention, but it has never been concluded (*Sborn. Deistv. Dogov.*, II, 1925, p. 40). Neither has the U.S.S.R. adhered to the Convention of Bern of 1886, nor to its revision signed at Berlin in 1908

[94] *Sobr. Zak. i Rasp. S S.S.R*, 1924, I, p. 131.

law on the subject is found in the Decrees of the R.S.F.S.R. of November 10, 1922, in the Instructions of October 6, 1923, and in the Decree of March 4, 1925.[95] Article 21 of the first decree provides that

"The establishment of the right to trademarks by foreign industries where owners enjoy civil capacity in the R.S.F.S.R., in accordance with Article 8 of the Introductory Law to the Civil Code [of the R.S.F.S.R.] takes place in [the same] manner as established for the industries of the R.S.F.S.R."

The Instructions outline the technical formalities, while the Decree of 1925 makes the application of the principles laid down in the Decree of 1922 subject to reciprocity. After the formation of the Union, the law regarding trademarks was incorporated in the Decree of February 12, 1926, Article 20 of which repeats in substance the provision of earlier laws regarding the rights of foreigners in this respect.[96]

International treaties affirm this attitude. Thus Article 1 of the Agreement with Estonia of March 3, 1928, provides:

"Estonian commercial or industrial undertakings, and commercial and industrial undertakings belonging to the U.S.S.R., shall enjoy in the territories of the other Contracting Party, in respect of trade and commercial marks, the same protection as the national undertakings of the latter Party, but not for a longer period than that accorded by the country of origin." [97]

Contractual Rights

As to contractual rights, Soviet laws are no less liberal to foreigners than as to the rights of property. Foreigners may enter into contracts on an equal footing with Soviet citizens. For the enforcement and interpretation of these contracts, the principles of *lex loci contractus* and *locus regit actum* are applied. Thus, contracts entered into by foreigners within Soviet territory are

[95] *Sobr Uzak i Rasp R S F S.R.*, 1922, I, pp. 1342–1344; 1933, I, pp 1266–1268; and 1925, I, p. 330, respectively

[96] *Sobr. Zak i Rasp S.S.S R*, 1926, I, p 128.

[97] *Sborn. Deistv. Dogov.*, V, 1930, p 88; LXXX, 401, L N T S *Cf* also Art 18 of the Treaty with Italy of Feb. 7, 1924 (*supra*, p. 149). For the rights of industrial enterprise, exploitation of the subsoil and of the land, see Art 22 of the Civil Code of the R S.F S R., Decree of the Central Executive Committee of the U S.S.R of July 13, 1923, Art 9 of the Land Code of the R S F.S R., Art. 2 of the Forest Code, Decree of the Central Executive Committee of the U.S S.R. of June 26, 1925, Decree of the Ukrainian Central Executive Committee of Aug. 27, 1924.

governed by Soviet law. As to contracts entered into abroad, Article 7 of the Code of Civil Procedure of the R.S.F.S.R. of 1923 provides:

"In deciding cases involving contracts and acts concluded abroad, the courts must take into consideration the laws in force in the place of conclusion of such contracts or acts, if the [conclusion] of such contracts and acts is permissible according to the laws of the R.S.F.S.R., or agreements of the R.S.F.S.R. with the state where they [the contracts and acts] were concluded." [98]

In general today, all contracts entered into in the Soviet Union by foreigners, be they between foreigners or with Soviet nationals, are subject to the jurisdiction of the Soviet Courts. Provisions to this effect have been incorporated in treaties entered into by the Soviets.[99] Before the formation of the Union, however, it was not unusual to find treaty provisions for special arbitral procedure for the settlement of claims arising in connection with contracts of the citizens of the Contracting Parties.[100]

e Rights

The attitude of the Soviets toward the right of foreigners to engage in commerce is seen both in Soviet national laws and in treaties. Of the former it will suffice to mention the provision of Article 8 of the Civil Code of the R.S.F.S.R., already quoted,[101] which stipulates that, unless limited in their rights by decrees of the central organs of the Soviet Government, foreigners in the Soviet Union have the right to "open or acquire trade or manufacturing industries." The attitude of the Soviet Government toward this right of foreigners is best seen, however, in their treaties. Inasmuch as foreign trade is the exclusive monopoly of the Soviet State,[102] the provisions in these treaties refer only

[98] *Sobr. Kodeksov R.S.F.S.R*, 4-e izd., p. 883. *Cf* also Art. 8 of the Ukrainian Statute on Foreigners, and Art. 17 of the White-Russian Statute on Foreigners (*supra*, p. 148)

[99] See Art. 15 of the Provisional Treaty with Czechoslovakia of June 5, 1922; Art. 3 of the Treaty with Sweden of Mar. 15, 1924, and Art 9 of the Treaty with Italy of Feb. 7, 1924 (*Sborn. Deistv. Dogov*, I, 1924, pp. 190–191 and II, 1925, pp. 69 and 38, respectively; XXV, 252, L.N.T.S. for Treaty with Sweden).

[100] See Art. 12 of the Treaty with Austria of Dec. 7, 1921; Art 13 of Provisional Agreement with Germany of May 6, 1921, and Art 5 of Agreement with Germany of Nov. 5, 1922 (*Sborn. Deistv. Dogov.*, I, 1924, pp. 38, 56–57 and 61, respectively; VI, 268, L N T.S., and XXVI, 388, L.N.T S, respectively, for Agreements with Germany).

[101] *Supra*, p. 147–148.

[102] Art. 1, Clause "h" of the Constitution of the U.S.S.R., Appendix I.

to trade within the Soviet Union. To quote Article 6 of the Treaty with Great Britain of March 16, 1921:

"Each party undertakes generally to insure that persons admitted into its territories under the two preceding articles shall enjoy all protection, rights and facilities which are necessary to enable them to carry on trade, but subject always to any legislation generally applicable in the respective countries" [103]

Article 2 of the Economic Convention with Germany of October 12, 1925, reads:

"The nationals of each Contracting Party shall be permitted in the territory of the other Party, to carry on any activities not forbidden by the legislation of the country to nationals of the country or to nationals of the most-favored nation, whether or not such activities are exercised for purposes of financial profit.

"In so far as the legislation of the country makes the exercise of a profession or industry by nationals of the country dependent on their fulfilling certain given professional and industrial conditions, permission to nationals of the other Contracting Party to carry on the same profession or industry shall be subject to the conditions in force in the State in which they reside.

"In the exercise of their professional or industrial activities, the nationals of each Contracting Party in the territory of the other Contracting Party shall be entitled to the same privileges, exemptions and facilities as the nationals of the country and the nationals of the most-favored nation.

"The exercise of an itinerant trade shall be subject to the regulations applicable to foreigners in general." [104]

These quotations require no comment. Special mention must be made, however, of the rights of foreigners in regard to concessions. The first Soviet law on these rights was the Decree of November 23, 1920, according to which concessions might be granted to "dependable foreign industrial companies and organizations." [105] The later treaty agreements with foreign states prove, however, that this decree can hardly be considered as the basic law by which the concession rights are regulated, and

[103] *Sborn. Deistv. Dogov*, I, 1924, p. 50; IV, 121, L.N.T.S.

[104] *Ibid.*, III, 1926, p. 77. *Cf.* also: Art. 4 of the Agreement with Denmark of Apr. 23, 1923 (XVIII, 16, L.N.T.S.); Arts 4, 14 and 26 of the Treaty with Italy of Feb 7, 1924; Art. 4 of the Treaty with Japan of Jan. 20, 1925 (XXXIV, 32, L.N.T.S.).

[105] *Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1920, pp. 484–485.

that it is the separate agreement in each individual case that controls the rights of foreigners in this regard.[106]

Marriage Rights

The most important rights of family law are those of marriage and divorce. As to these, Soviet legislation provides no special rules for foreigners. Soviet law recognizes only civil marriage, but the principle *locus regit actum* is applied, with the result that a foreigner marrying in the Soviet Republics must conform to the Soviet rule, whereas the marriage of a foreigner performed abroad may be recognized as valid in the Soviet Republics irrespective of the requirements found in the Soviet marriage laws.

To quote Article 15 of the Ukrainian Statute on Foreigners of March 28, 1922:

"15. The marriage of foreigners, or of a foreigner with a Ukrainian citizen, when performed abroad in conformity with the laws of that country, or of the Uk.S.S.R., is considered valid in the Uk.S.S.R. The marriage of foreigners, or of a foreigner with a Ukrainian citizen within the territory of the Uk.S.S.R. must be performed in conformity with laws of the Uk.S.S.R. The legal consequences of such marriages are determined by the same laws [respectively]."[107]

In the R.S.F.S.R. the rules governing the marriage of foreigners are generally the same, except that marriages in foreign diplomatic missions, according to the foreign practice, are permitted, subject, however, to subsequent registration to insure recognition of their validity. In the Marriage Code of 1927 it is provided in Article 136 that

"Marriages within the territory of the U.S.S.R. of foreigners with Soviet citizens, and those of foreigners, are to be concluded in conformity with the general laws.

"Note: On the basis of reciprocity, the registration of marriages of foreigners in the respective foreign diplomatic missions and consulates

[106] *Cf* Art. 6 of the Treaty with Japan of Jan 20, 1925, and Protocol B annexed thereto; Art 11 of the Treaty with Czechoslovakia of June 5, 1922 (*Sborn. Deistv. Dogov*, I, 1924, p. 190, and III, 1927, p. 10, respectively; XXXIV, 32, L.N.T.S for the Treaty with Japan) For Soviet legislation on the subject, see the Decrees of Aug. 23, 1923, Apr. 24, 1925, and Mar. 13, 1922. *Cf.* also Art. 55 of the Soviet Civil Code of 1922, and the Decree of Apr. 12, 1923, and Instructions to it of the same date.

[107] *Sobr. Uzak. i Rasp. R.K.P Uk.*, 1922, par. 237; a similar provision is found in the Statute on Foreigners of the White-Russian S.S.R. of Aug. 4, 1922.

in the U.S.S.R. is allowed under condition that the provision of Article 2 of this Code is complied with." [108]

Several provisions have been made in Soviet treaties where the Contracting Parties have agreed to "enter immediately into negotiations for the purpose of concluding agreements relative to marriage and marriage certificates." [109] No such agreements are found, however, in the official records of the Soviets.

The marriage of foreigners performed outside the U.S.S.R. is recognized as valid in the R.S.F.S.R. according to Article 137 of the Marriage Code of 1927, provided that the laws of the respective country were complied with.

In regard to the marriage of Soviet citizens abroad, the Soviet Government is less prone to apply the law of the place where the marriage is entered into.[110] Article 53 of the Marriage Code of the R.S.F.S.R. of 1918 read:

"Performance of the marriage [of Soviet citizens] abroad may be effected by the [diplomatic] representative of Russia [*sic*] abroad, who must notify the Central Office of the Registry of Acts of Civil Status, and submit copies of the marriage certificates." [111]

In the Marriage Code of the R.S.F.S.R. of 1926, Note 2 to Article 111 reads:

"The acts enumerated in this article [including marriage] when taking place abroad, are performed by the Diplomatic Missions and Consulates of the U.S.S.R." [112]

It is apparent, however, that not all marriages of Soviet citizens abroad are expected to be performed by the Soviet Representatives in foreign states. There is no indication, however, in the

[108] *Sobr Kodeksov R.S.F.S.R*, 4-e izd, p. 646. Art. 2 reads. "Registration of the marriage in the Office of the Registrar of Acts of Civil Status is [required as] a proof of such marriage. Documents evidencing church marriage are of no legal value"

[109] Art 3 of the Agreement with Austria of Dec 7, 1921. *Cf* also Art 6, cl. iv, of the Agreement with Germany of May 6, 1921, and Art 1, cl. v, of the Treaty with Turkey of Mar 16, 1921. (*Sborn. Deistv. Dogov.*, I, 1924, pp. 37, 55 and 157, respectively; VI, 268, L.N.T.S. for the Agreement with Germany.)

[110] Since the laws of the R.S.F.S.R. on the subject are practically copied in other Union Republics, it will suffice to analyze briefly the marriage laws of the R.S.F.S.R.

[111] *Sist Sborn Vazhn. Dekretov*, 1917–1920, pp. 212 and 222, respectively

[112] *Sobr. Kodeksov R.S.F.S.R.*, 4-e izd, p. 644.

Soviet laws as to whether the registration of such marriages in Soviet diplomatic missions or consulates is compulsory, or not. In an attempt to answer this question, the People's Commissariat for Foreign Affairs of the R.S.F.S.R. on April 20, 1923, issued a Circular which stated that

"all marriages effected abroad in conformity with local laws are recognized as valid in the R S.F.S.R., in so far as the technicalities required for marriage by our [Soviet] Code have been complied with. In order, however, to make such marriage indisputably valid, their registration in the appropriate [Soviet] consulate is necessary." [113]

The last clause reduces the whole situation to confusion and settles nothing.

The treaty practice of the Soviets affords nothing more than what has been said in regard to the marriage of foreigners in Russia: there are no agreements on the subject, although provisions for such agreements are found in several treaties.[114]

Divorce

A few words are proper in regard to the divorce law. There are no provisions in Soviet law forbidding foreigners to take advantage of the extremely liberal Soviet divorce laws.[115] The legal effect of a divorce obtained under Soviet law by foreigners, after their return to their home countries, is the concern of their national laws.

The Soviet laws on the divorce of Soviet nationals abroad are more explicit. The most important aspect of this problem is that in regard to the validity in the Soviet Union of divorce granted to Soviet citizens abroad in accordance with the laws of the country where it was obtained. The Circular of the People's Commissariat for Foreign Affairs of the R.S.F.S.R. of June 2, 1921, No. 19, deals with this aspect of the problem. It reads in part:

"In view of the fact that the basis of any [form of] divorce . . . is the free will of at least one of the parties thereto, and whereas

[113] Egor'ev and others, *as cited*, p 196. *Cf* also Circular of the People's Commissariat for Justice of June 14, 1923, on the Manner of Conclusion of Marriage abroad, No 144, and the Circular of the People's Commissariat for Foreign Affairs of the U S.S.R of March 23, 1925, No. 272

[114] *Supra*, FN. 109, p. 159.

[115] Arts. 17–24 of the Marriage Code of the R S.F S R of 1927 (*Sobr. Kodeksov R.S.F.S.R.*, 4-e izd., pp. 632–633).

according to the Soviet laws this is the one essential for the consummation of divorce proceedings . . any divorce of Russian citizens granted to them abroad in conformity with the laws of the given country is recognized as valid by the Soviet authorities, irrespective of the manner of such proceedings.

"The aforesaid, however, shall not apply to instances of dissolution of marriages of Russian citizens which are legal according to the laws of the R.S.F.S R., if such dissolution was effected under compulsion: such dissolutions, decreed against the free will of both the parties thereto are considered null and void according to the Laws of the R.S.F.S.R." [116]

As to the rights of inheritance of foreigners, the rule today prevails that the national law of the country of the deceased is the decisive factor. Neither the Civil Code of the R.S F.S.R.[117] nor the codes of other component republics of the Soviet Union have any provisions relative to this problem It may be inferred, however, that in the application to foreigners of inheritance laws under the Régime of the Dictatorship of the Proletariat, the principle of *lex rei sitæ* prevails. In support of this conclusion Article 7 of the Ukrainian Statute on Foreigners may be cited: Inheritance

"The distribution of the property left after the death of a foreigner is determined by the laws of the Ukrainian S.S.R., in so far as no different agreement has been reached in special international agreements of the Ukrainian S.S.R." [118]

The treaty practice of the Soviets, however, shows that a distinction is made between succession to personal and to immovable property. Here the Soviets recognize that the former is subject to the national laws of the deceased. A typical illustration is paragraph 5 of Annex 1 to Article 16 of the Treaty with Estonia of February 2, 1920:

"The personal property left after the decease of a person in the territory of one of the Contracting Parties by subjects of the other Party shall be handed over in its entirety to the consular representative

[116] *Cf.* also Circular of the People's Commissariat for Justice of June 6, 1923, No 144; Circulars of the People's Commissariat for Foreign Affairs, of April 4, 1923, No 86, and of May 21, 1923, No. 97 (Egor'ev and others, *as cited*, pp. 197ff.).

[117] *Sobr Kodeksov R S.F.S R.*, 4-e izd pp 414ff

[118] *Sobr Uzak i Rasp R.K P Uk.*, 1922, p 239. *Cf.* also Art 17, of similar statute of the White-Russian S S.R.

or other delegate of the State to which the deceased belonged, in order that further disposition of such property may be carried out in conformity with the laws to which the deceased was subject." [119]

Immovable property is always governed by the law of the state where it lies. This principle is formulated in Article 11 of the Treaty of Commerce and Navigation between the U.S.S.R. and Italy of February 7, 1924:

"The succession by law or by will either in regard to the order of descent or in regard to the amount of inheritance taxes shall be regulated by the national laws of the deceased in respect to his movable property, and in regard to immovable property by the law in force for the nationals of the state where such immovable property lies." [120]

Occasionally, even in the absence of treaty provisions, the Soviet Government has consented to the personal property of a deceased foreigner being given over to the consul of his country for disposal. Thus in a verbal communiqué of February 15, 1924, the People's Commissariat for Foreign Affairs informed the British Embassy in Moscow that

". . . in accordance with the general principles of international law, the People's Commissariat for Foreign Affairs sees no objection to transferring the property left by the deceased . . . to the British Embassy to be dealt with in accordance with British law. . . ." [121]

The fact that the above-mentioned treaties were made subject to reciprocity, indicates that the Soviet attitude towards the inheritance rights of Soviet citizens abroad follows the same prin-

[119] *Sborn. Deistv. Dogov.*, I, 1924, p. 204 (*Cf.* also: the Treaties of the R.S.F.S.R. with Latvia of Aug. 11, 1920 (Article 17) (II, 196, L.N.T.S.); with Lithuania of July 12, 1920 (Article 13); and of the Ukrainian S.S.R with Latvia of Aug. 3, 1921 (Article 10); with Lithuania of Feb 14, 1921 (Article 7); and with Estonia of Nov. 25, 1921 (Article 11) (*Sborn Deistv Dogov*, I, 1924, pp. 84, 104, 93, 109, and 209 respectively). The official French and English translations of the Treaty deposited with the Secretariat of the League of Nations read "in order that its return to Estonia may be carried out," etc. (XI, 69, L.N.T.S.), while the original Estonian and Russian texts in the same volume (p 47), and the Russian text in the Russian Official Collection of Treaties (as cited), read ". . . that further disposition of such property may be carried out," etc.

[120] *Sborn. Deistv. Dogov.*, II, 1925, p 39. *Cf.* also Treaties between the R.S.F.S.R and Turkey of March 16, 1921 (§8); the Transcaucasian S.F.S.R. and Turkey of Oct. 13, 1921 (Art. 11), and the Ukrainian S.S.R and Turkey of Jan. 21, 1922 (Art. 8) (*ibid.*, I, 1924, pp. 157, 163 and 169, respectively).

[121] Egor'ev and others, *as cited*, p. 298. *Cf.* also Exchange of Notes between the Swedish Ambassador and the People's Commissariat for Foreign Affairs of Mar. 6 and 23, 1925 (*ibid*, pp 300–302).

ciples: movable property is subject to the national laws of the deceased, and immovable is governed by the principle *lex rei sitæ*.

Summary

To summarize, the Soviet law and practice in regard to natural persons in international law are not much different from those of non-communist states. In evaluating Soviet adherence to the general practice, as reflected both in legislation and international treaties, it must be kept in mind that the reason for this adherence is to be sought not in communist theories, but in the political necessity forced upon the Soviets. As the origin of a national law may be sought in the clashes and conflicts of interests of individuals, so the origin of international law, including the rules governing the status of natural persons in a foreign country, is found in the conflicts of interest of separate states. The fact that such rules exist in international law is in itself a proof of the fact that natural persons, in the life of the international community, give rise to conflicts of interests which call for definite means of adjustment, in order that the life of this community may be carried on smoothly and productively. It is in the necessity of meeting these issues that an explanation of the Soviet adherence to the generally accepted rules of international law relative to natural persons is found.

Whatever the rôle and the rights of natural persons in the prophesied communist class-less and state-less commonwealth of peoples, at present, the general rule still prevails that the international status of natural persons is determined by the political allegiance which they owe to their state. So long as national political states exist, *i.e.*, until the relations between individuals—citizens of different states—have changed their international character to one of universal citizenship within a single state-less commonwealth, the international conflicts of interests of different states will remain, and hence states will be bound to resort to rules of international law to settle these conflicts.

The reaction of the Soviet State to the problems relative to its subjects abroad and to foreigners within its own territory is controlled by the same necessity. In fact, these problems have been given considerable attention by the Soviet Government. It is true that in its crusade of defense of the Proletariat, the Soviet Government has given to foreigners political rights more

extensive than any other state has ever given. There is no data, however, proving that it is insisting anywhere that the same extensive political rights be given to Soviet citizens abroad. It is true that theoretically the Soviet Government aims at ultimate denationalization of natural persons. In practice, however, it has definitely emphasized the necessity of each individual having political nationality, and has outlined the ways in which this nationality is acquired or lost, prescribing at the same time the rights and duties connected therewith. It is true that the Soviet Government is willing to relieve married women from following the nationality of their husbands, but at the same time the citizenship of children in the U.S.S.R. is determined by virtue of both *jus sanguinis* and *jus soli*. All these illustrations suggest the conclusion that the Soviet authorities are fully cognizant of the effect which the existence of political states has upon the status of natural persons in international relations.

Seeing no materialization of the universal commonwealth in the near future, and being forced to deal with the outside world in the guise of a political state possessing all the classical characteristics of non-communist states, the Soviet Union finds no other way of settling the problems arising from conflicts between states interested in their respective citizens than to resort to the rules of international law accepted by other civilized nations.

Chapter VII

DIPLOMACY

The study of the principles of international law relative to diplomatic representation, as followed by non-communist nations, is based on materials derived from three main sources: custom, national legislation, and treaty provisions. An analysis of the Soviet practice reveals only one difference: as a logical result of the class differentiation between capitalists and proletariat, preached by the communists, custom loses its importance in shaping the Soviet law on diplomatic agents. This leaves national legislation and treaties the most important sources when the Soviet law on the subject is analyzed.

Legislation of the R.S.F.S.R.

In the beginning, the Soviet laws dealing with diplomatic agents were merely attempts to discontinue the practices of the preceding governments in Russia. Such was the Decree of the People's Commissariat for Foreign Affairs of November 26, 1917, which, while not containing any general provisions, recalled the ambassadors, ministers and other members of the Russian Foreign Service abroad who did not respond to the Soviet offer to continue their work under the direction of the new Régime.[1]

Abolition of Diplomatic Ranks

Of much greater moment was the Decree of the Council of the Peoples' Commissaries of the R.S.F.S.R. of June 4, 1918, by which the centuries old traditional division of diplomatic agents into different ranks was disavowed by the Soviets as obsolete and not in conformity with the generally recognized principle of the equality of states. This decree is of great importance from the point of view of the historical development of Soviet international law. Having abolished the principles of the Congress of Vienna, embodied in the old imperial laws of Russia, it introduced the new principle of equality of diplomatic agents as regarded not only

[1] *Sobr. Uzak i Rasp. RSFSR*, 1917–1918, p. 59.

their official rank, but their social precedence as well. During the ensuing three years the Soviets were uninterruptedly engaged in the struggle for their existence in the Civil War of 1918-1921. As a result no decrees relative to diplomatic representatives were passed.

When in 1921 the Civil War came to an end, a series of peace treaties and treaties of friendship with neighboring states was concluded by the R.S.F.S.R. A number of Soviet diplomatic agencies were established in foreign capitals. Also, foreign diplomatic missions were being received in rapid succession in Moscow. At the same time a mutual exchange of agents, to carry on quasi-diplomatic functions under the disguise of representatives of various charitable institutions, of the press and the like, continued to be relied upon. In addition to this there came into being quite new and exclusively Soviet forms of foreign representation, namely agencies which the Soviet Régime established abroad for the purpose of carrying on its foreign trade, the monopoly of which had been taken over by the state.

To further the development of the diplomatic relations of the R.S.F.S.R. with the outside world, the Soviet Government was forced to make certain concessions to the foreign diplomatic representations in Moscow to meet their traditional understanding of diplomatic intercourse as accepted by international law. The result was that Soviet laws had to be promulgated to deal with the privileges of diplomatic agents and with other aspects of diplomacy, such as the beginning and the termination of the diplomatic mission, and so forth. Furthermore, a new legal formula to regulate the relationship between Soviet diplomatic and trade agencies abroad had to be found.

"Representations Plenipotentiary"

The first decree on the subject was that of the Council of Peoples' Commissaries of the R.S.F.S.R. of May 26, 1921, known as "The Statute on Soviet [Diplomatic] Organs abroad."[2] Article 1 of this law states that the Diplomatic Missions, officially called "Representations Plenipotentiary," the Consular Offices and the Trade Representations are permanent official agencies of the Soviet Government in foreign states with which normal inter-

[2] *Sobr. Usak. i Rasp. R.S.F.S.R.*, 1921, pp. 353-355.

course has been resumed. According to Article 5, the representative plenipotentiary is the sole representative of the R.S.F.S.R. in the country of his sojourn who acts on behalf of the Soviet Régime in political matters. Article 10 states that the representative plenipotentiary is subordinate only to the People's Commissariat for Foreign Affairs. Later, however, this article was supplemented by a Decree of the Council of People's Commissaries, of January 22, 1922,[3] by which the appointment of representatives of the R.S.F.S.R., as well as their recall, was to be made by decree of the All-Russian Central Executive Committee (VTsIK), only the chargé d'affaires [4] being appointed and recalled by the People's Commissariat for Foreign Affairs. Article 6 places the representative plenipotentiary in administrative charge of all Soviet diplomatic and trade agencies in the given foreign state. Article 7 prescribes that these agencies should submit to the representatives plenipotentiary all information concerning their activities. Article 8 gives to the representative plenipotentiary the right to suspend actions initiated by any other Soviet organ under his jurisdiction. Article 9, however, limits this right: he has no control over special technical work carried out by Soviet agencies representing other branches of the Government.

Another decree was passed by the Council of Peoples' Commissaries of the R.S.F.S.R. on June 30, 1931, known as "The Statute on Diplomatic Representatives of Foreign States Accredited to the Workers' and Peasants' Government of the R.S.F.S.R." [5] Article 1 of this Statute deals with questions of a general character, letters of credence, the nature of the mission and the problem of *agrément*. Article 2 refers to the personnel of diplomatic missions. Article 3 fixes the extent of the rights and privileges which the foreign representatives may enjoy while in the Soviet Union. Article 4 grants foreign diplomatic representatives the right of free communication with their respective governments and the right of flying their national flag. Article 5 gives to the People's Commissariat for Foreign Affairs the right to grant diplomatic privileges also to foreign agents who do not for-

[3] *Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1922, I, p. 149
[4] The term *chargé d'affaires* is not used in the sense of diplomatic rank.
[5] *Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1921, pp. 398–399.

mally enjoy diplomatic rank. Finally, Article 6 determines the conditions and formalities of termination of the diplomatic mission. As to this last article, it may be added that on July 2, 1923, the Council of Peoples' Commissaries passed a decree which modified its provisions so as to make them conform with the generally accepted rules of international law. The expression "he hands over to the People's Commissary for Foreign Affairs his papers of recall" is changed to read, "he hands over his papers of recall in the same manner as the letters of credence are presented." [6]

From the time these two important acts were passed until the formation of the U.S.S.R., when the problems connected with foreign relations were transferred to the competence of the Union as a whole, two decrees were passed concerning diplomatic passports.[7] During the same period a number of laws concerning diplomatic mail and customs regulations for the diplomatic agents were promulgated by the Soviet lawmakers.[8]

Legislation of the U.S.S.R.

When the U.S.S.R. was formed in 1923, Article 1 of its Constitution provided that the diplomatic relations and the diplomatic representation of the Union in international intercourse should be vested in the Union as a whole. Consequently, the authorities of the U.S.S.R. were confronted with the problem of regulating the formal aspects of the legal status of diplomatic agents. Strange as it may appear, the body of Union laws in this respect was less extensive in the beginning than that of the R.S.F.S.R. In part this can be explained by the fact that several laws already promulgated by the R.S.F.S.R. were considered after 1923 as permanent "customary" laws of the Soviet Union. To such belonged, for instance, the Statute of 1921 on representatives plenipotentiary.

Constitutional Provisions

The Union legislators at first were mainly concerned with the problem of deciding to what organs should belong the authority of appointment and recall of the diplomatic agents of the Union. On November 12, 1923, a Statute on the People's Commissariat

[6] *Sobr Uzak i Rasp. R.S.F.S.R.*, 1923, I, p. 1131.

[7] Decrees of August 10, 1921, and of Feb. 1, 1923 (*Sobr. Uzak. i Rasp R.S.F.S.R.*, 1921, pp 499–500, 1923, pp. 277–278, respectively).

[8] *Cf.* Decree of Oct 14, 1921 (*Sobr. Uzak. i Rasp. R.S F.S.R.*, 1921, p. 667; Instructions to this decree, dated Nov. 4, 1921 (*ibid.*, pp. 749–751); Decree of May 31, 1922 (*Sobr. Uzak i Rasp R.S.F.S.R.*, 1922, p. 626); Decree of Aug. 24, 1922 (*ibid.*, p. 906); and Decree of Oct. 27, 1922 (*ibid.*, p. 1080).

for Foreign Affairs was enacted, Articles 13, 14, and 17 of which followed the principle of the Decree of 1922,[9] vesting this authority in the Central Executive Committee of the U.S.S.R.[10] After that a series of decrees was passed dealing with various aspects of the intricate problem of diplomacy.

In the joint decree of the Central Executive Committee and the Council of Peoples' Commissaries of the U.S.S.R. of August 29, 1924, on the Soviet national flag, there were several references to the so-called *prerogative d'honneur* of diplomatic representatives.[11] On November 21, 1924, instructions were issued by the Central Executive Committee outlining the rules of etiquette for political and social functions of the Soviet diplomatic agents.[12] On May 22, 1925, a Decree of the Central Executive Committee of the U.S.S.R. modified articles 13, 14, 15, 16 and 17 of the Statute on the People's Commissariat for Foreign Affairs of November 12, 1923. A note to Article 17 in this decree provided that if any of the Union Republics were particularly interested in the development of diplomatic relations with certain foreign states, a special counselor might be added to the Soviet diplomatic mission upon the suggestion of such Union Republic.[13]

Statute of Jan. 14, 1927

On January 14, 1927, the Central Executive Committee and the Council of Peoples' Commissaries of the U.S.S.R. promulgated by a joint decree the "Statute on Foreign Diplomatic and Consular Agencies in the U.S.S.R."[14] Of outstanding importance was the introduction into this law of 1927 of the principle of reciprocity, on which diplomatic privileges were to rest thenceforth. In the part relative to diplomatic representatives, this law omits all mention of particulars, such as the presentation of letters of credence and of recall, found in the law of 1921. It states that diplomatic privileges are accorded only after the letters of credence have been found to be in due form, and places a limitation upon the persons who may enjoy these privileges.

[9] *Supra*, p 167.
[10] *Sobr Uzak. i Rasp R S F S R.*, 1923, I, pp. 1830–1834.
[11] *Sobr Zak. i Rasp S S S R*, 1925, I, pp 331–337
[12] *Ibid*, 1924, I, pp. 402–403.
[13] *Ibid*, 1925, I, p 530
[14] *Ibid*, 1927, I, pp. 68–71

They are to be only diplomats in the strictest sense of the term, while according to the Statute of 1921 this matter might depend upon agreement between the states concerned. As to the other provisions, they are approximately the same as in the earlier Statute, the only difference being that the law of 1927 in Articles 7 and 8 emphasizes the right of political asylum.

Other Enactments

This law of January 14, 1927, by its nature and content might be taken as the last word on the subject, but unfortunately the Soviet diplomatic agents are still not free from the confusing variety of enactments issued by other departments of the Soviet Government, such as the People's Commissariats of Justice, Trade, War, etc., which enactments have very often a close bearing on the field of diplomatic representation. Some of these were issued before the law of January 14, 1927, came into force. Thus Article 1 of the general provisions of the Criminal Code of the U.S.S.R. of October 31, 1924, is not exactly in conformity with Article 2 of the law of January 14, 1927.[15] Its language is as follows:

"All persons within the territory of the Union of Socialist Soviet Republics with the exception of those foreigners who enjoy the right of extraterritoriality are subject to the criminal laws of the country. . . ."[16]

Several laws were also issued on taxation which in part concerned diplomatic agents. Certain articles of these laws are in force to the present day, among them Article 2 of the Decree of the Council of Peoples' Commissaries of October 24, 1923, concerning the mobilization of horses, by which the animals in the service of foreign diplomats are exempt from the operation of this act;[17] Article 3 of the Statute of February 22, 1924, on military auto-transport duty with a like provision;[18] Article 34 of the Statute on Local Finance of April 25, 1926, which relieves

[15] Art. 2 of this law provides that the diplomatic agents "are not subject to the jurisdiction of the courts of the Union of S S R. or Union Republics in criminal cases, with the exception of cases where there is consent of the respective foreign states to this effect"

[16] *Sobr. Zak. i Rasp S.S.S R*, 1924, pp. 372–380. For other laws see Art. 178 of the Code of Criminal Procedure of the R.S F.S.R., and Arts 176, 175, 165 and 176 of similar codes of the Uzbek S S.R., White Russian S S R., Tartar S S R., and Ukrainian S.S.R., respectively.

[17] *Vestnik TsIK*, No. 6, par. 141.

[18] *Ibid*, No. 3, p 62

from any duty the diplomatic mail of foreign diplomatic missions accredited to Moscow, while Article 42 of the same Statute reads:

"From the payment of any kind of local taxes and duties are exempt:
"(*a*) [the property of] diplomatic missions of foreign states accredited to the Government of the Union of S S.R. . . ."[19]

To these may be added also the Decree of August 27, 1926, dealing with rules by which the state authorities of the U.S S.R. and of the Union Republics must be guided in their dealings with foreign states,[20] the laws of 1923 and of 1926[21] relative to leases and the state income tax, respectively, in which diplomatic agents were specifically referred to as being exempt from the payment of such taxes.[22]

The above mentioned laws cover sufficiently the problems which may arise in connection with the diplomatic agents of a state, with the result that there has not been much legislation on the subject since then. Among the latest laws that are indirectly related to diplomacy the following may be mentioned: the law of September 14, 1927, on the stamp duty,[23] which in Article 51 in the List of Organizations Exempt from the Stamp Duty, mentions the correspondence of the foreign diplomatic missions in Moscow; a Decree of the Council of Peoples' Commissaries of May 14, 1928, concerning installation of radio,[24] Article 4 of which provides that Foreign Diplomatic Missions may receive permits for installation of receiving stations through the People's Commissariat for Foreign Affairs; and Articles 150 and 151 of the Customs Code of the U.S.S.R. of December 19, 1928[25] Finally, there was promulgated the Postal, Telegraph, Telephone, and Radio Code of February 15, 1929,[26] Article 20 of which states that the foreign diplomatic mail may be handled through channels other than the Post Offices of the Soviet Union.

[19] *Sobr. Zak. i Rasp S S S R*, 1926, I, pp. 574 and 575, respectively.
[20] *Ibid*, 1926, I, p. 1018ff. The text is given in Appendix X.
[21] *Ibid.*, 1926, I, p 1167.
[22] After the Decree of Jan. 14, 1927, these laws were suspended by the Decrees of Apr 30, 1927 (*Sobr. Zak. i Rasp. S.S S.R.*, 1927, I, p. 479), and of Dec. 14, 1927 (*ibid*, 1928, I, p. 4).
[23] *Ibid*, 1927, I, p 1095
[24] *Ibid*, 1928, I, p 625
[25] *Ibid*, 1929, I, pp 6ff
[26] *Ibid*, 1929, I, p 413

To these laws must be added various departmental instructions. Of these, the instructions on "Foreign Diplomatic Couriers and Diplomatic Mail" issued by the Central Customs' Office on November 26, 1927, must be referred to first of all.[27] Also the Joint Decree of the All-Russian Central Executive Committee and the Council of Peoples' Commissaries of the R.S.F.S.R of April 30, 1928, amending the Decree of June 14, 1926, concerning eviction by administrative orders from buildings occupied by foreign missions must be mentioned, by which diplomatic agents were declared immune from the regulations outlined in that Decree.[28]

International Agreements

It is true that an understanding of the Soviet attitude towards the international law on diplomacy must be sought primarily in national legislation, because it is upon the principle of the sovereign rights of states that these rules are based. Treaties, however, afford another source for the analysis of this attitude. In cases where the states dealing with each other have a common interpretation of sovereignty, there is logically no need for these rules to be incorporated in special agreements. However, there have been instances of attempted codifications, *e.g*, the Congress of Vienna of 1815 and the Havana Conference of 1928. Whatever the technical phraseology of the Soviet Decrees of 1918, by abolishing diplomatic ranks the Soviet régime abrogated Articles 826 and 827 of the Russian Imperial Code, and not the principles embodied in the Regulations of Vienna. As a matter of fact even today it is very difficult to say what the actual attitude of the Soviet régime to those Regulations is, for many of these rules are being applied by the Soviet Union in its international practice, despite the contrary evidence of its Statutes.

Although the Soviet Union did not take part in the Havana Conference of 1928, it is to be supposed that in principle it would welcome the idea of incorporating the customary rules of diplomacy in some text recognized by the Contracting Parties. Such a codification would help to justify the Soviet Government

[27] Published in *Zakonodat. i Admin. Raspor. po Vneshn. i Vnutr. Torgovle*, 1927, No. 70.
[28] *Sobr. Uzak. i Rasp R.S.F.S.R.*, 1926, I, pp 403ff, and 1928, I, p. 575.

in relying upon expressed rules and not upon custom, even if the latter has been sanctioned by the practice of centuries.

When, instead of being common, the interpretation of sovereignty by the states engaged in international relations is fundamentally different, diplomatic intercourse is more complicated. In its international aspect, sovereignty for the communist state is merely a right of national self-determination,[29] but for practical reasons, when dealing with full-fledged members of the family of nations, the Soviets do not emphasize their peculiar interpretation of sovereignty. However, when dealing with entities hitherto limited in the freedom of their international life, and now struggling to emerge from foreign control, the Soviet Union has not hesitated to give express formulation to its attitude toward such states. The best illustration of this is found in the agreements which the Soviet Government has entered into with the Oriental states with regard to mutual equality. Thus the Soviet authorities took care to include an express stipulation for the mutual equality of diplomatic agents in the treaties concluded with Afghanistan on February 28, 1921,[30] with Persia on Feb. 26, 1921,[31] and with China on May 31, 1924.[32]

The treaty with Persia contains a typical provision that the diplomatic agents of the Contracting Parties shall mutually enjoy:

". . . the right of extraterritoriality and other prerogatives in conformity with international law and custom, or with the norms as they exist in respect of diplomatic agents in both countries."

Prior to *de jure* Recognition

In general the Soviet treaties in regard to diplomatic agents may be divided into two groups: those concluded with the foreign states which recognized the Soviet Government *de facto*, and those with states which extended recognition *de jure*. The treaties of the first group, although no longer of practical value, are interesting as illustrations showing the influence of economic considerations on the rules governing the status and functions of diplomatic agents. The international practice of the Soviet

[29] *Supra*, pp. 26ff.
[30] *Sborn. Deistv Dogov*, I–II, 1928, p 10
[31] *Ibid*, I–II, 1928, p 107, IX, 384, L.N.T.S.
[32] *Ibid*, I–II, 1928, p 30, XXXVII, 176, L.N.T.S

Régime offers several treaties of this kind entered into between 1921 and 1923.[33]

In each of these treaties, the contracting parties agreed mutually to accept agents to perform functions which were often purely commercial rather than political in their nature. In later treaties, particularly in that with Denmark, the commercial character of these functions became secondary in importance, and was considered permissible only in so far as those functions did not conflict with the laws of the receiving state. The titles of such agents varied; they were designated "official agents" in treaties with Great Britain, and "official representatives" in treaties with Norway and Denmark.

The treaties with Great Britain and Italy, furthermore, provided for the possibility of refusing to admit anyone who was considered *persona non grata*.[34] Most of these treaties provide that the agents must be accredited to the People's Commissariat for Foreign Affairs in the Soviet Republics and to the Ministries of Foreign Affairs in the case of Soviet agents accredited abroad. In the treaty with Great Britain of March 16, 1921, however, the terms were very vague, the agents being accredited to "the authorities of the country of their assignment."[35] The privileges accorded such agents in these treaties ranged from a personal inviolability[36] to the "right of receiving newspapers from home."[37] The right of free communication with the home government is expressly provided for in each of these treaties.

Subsequent to *de jure* Recognition

The treaties of the second class, *i.e.*, those with countries by which *de jure* recognition had been accorded the Soviet Régime, usually contain brief references to the establishment of normal diplomatic relations.[38] This fact implies a recognition by the

[33] Treaty with Great Britain of Mar. 16, 1921 (*Sborn Deistv. Dogov*, I–II, 1928, p 12; IV, 128, L.N.T.S); with Germany of May 6, 1921 (*ibid.*, p. 15, VI, 268, L.N.T.S); with Norway of Sept. 2, 1921 (*ibid*, p 79; VII, 294, L.N.T.S.), with Austria of Dec. 7, 1921 (*ibid*, p. 4); with Italy of Dec. 26, 1921 (*ibid.*, p. 29); with Czechoslovakia of June 5, 1922 (*ibid*, p. 45); and with Denmark of Apr 23, 1923 (*ibid.*, p. 20; XVIII, 16, L.N.T.S.).

[34] Arts 4 and 5, and 3 and 5 respectively.

[35] Art. 5.

[36] Art. 5 of the Treaty with Great Britain of March 16, 1921 (IV, 128, L.N.T.S.), and Art 4 of the Treaty with Italy, December 26, 1921.

[37] Art 5 of the Treaty with Czechoslovakia of June 5, 1922.

[38] Given in the list of Treaties in Appendix XXIV.

Soviets of the applicability to foreign diplomatic agents of the customary rules of international law.

The fact that the Soviets admit that a change from *de facto* to *de jure* recognition has a definite effect is evidenced by the above treaty with Denmark. When the Soviet Régime was recognized *de jure* by the Government of Denmark, the diplomatic communication to that effect stated clearly that "since normal diplomatic relations have been established between the two countries" the conditions of the Treaty of 1923 relative to the status of official representatives must be changed to conform with the principles of international law.[39]

Tenure of Office

Having thus briefly examined the sources from which to gather the Soviet attitude towards the rules of international law in reference to diplomacy, an analysis of this attitude may now be undertaken.

Appointment

It has already been stated that the right of shaping foreign relations is one of the basic rights of a sovereign state. This automatically implies the right of a state to appoint agents to represent it abroad. In the Constitution of the U.S.S.R., Article 1 states that the right of appointment and recall of the representatives plenipotentiary belongs exclusively to the Central Executive Committee of the U.S.S.R. By appointing its diplomatic agents, the Soviet Union actively recognizes the right of diplomatic intercourse, and by receiving foreign representatives in Moscow it passively acknowledges its consent thereto.[40]

The ordinary external manifestations of the right of diplomatic intercourse are readily seen from the actual contemporary practice of states. Ordinarily a separate diplomatic representative is accredited to each individual state with which normal diplomatic relations exist. Often, however, usually for reasons of economy, one diplomatic agent may represent several states, or, *vice versa*, a state may accredit one representative to several foreign governments. These principles were accepted by the

[39] *Sborn Deistv. Dogov*, I–II, 1928, p. 20; XXVII, 150, L N T.S.

[40] Ordinarily these two aspects are concurrent between any two given states Exceptions to this are very rare Thus, prior to the World War, Russia, although having an ambassador at the Vatican, never consented to have Papal Nuncios at St Petersburg. The same was true in the case of Germany and the Vatican. At the present this exception exists in the relation between the Court of St. James and the Papal State.

Soviet Régime almost immediately after the November Revolution of 1917: witness the note of the Norwegian Diplomatic Mission to the People's Commissariat for Foreign Affairs of February 29, 1918, stating that the United States of America, Japan, Brazil, and Serbia had transferred the protection of their respective nationals to the Norwegian Diplomatic Mission at Petrograd. This note was acknowledged by the Soviet authorities. On August 15, 1918, a similar note announced that Montenegro and Roumania had been added to the original list. In 1927, when diplomatic relations between Great Britain and the Soviet Union were severed, the Norwegian Diplomatic Mission at Moscow undertook to protect the interests of British nationals in the Soviet Union. In 1929 the Soviet Régime secured the consent of the German Government to protect the interests of Soviet citizens in China.

Reception

When an ambassador is sent abroad, a foreign government may ignore the person claiming to be an ambassador until he formally assumes the office which he is sent to hold. This takes place at the moment the credentials—*lettres de créance*—evidencing his official position are presented to the proper authorities of the receiving state. According to their rank, some agents of foreign governments are directly accredited to the sovereign, and others to the Minister of Foreign Affairs. This, in its turn, results in a difference in the ceremonial with which the presentation of the letters of credence takes place. In the Soviet Union, as a result of the abolition of the gradation of diplomatic ranks,[41] this ceremonial is uniform for all foreign representatives, and, to conform with the principles of extreme democracy advocated by the Soviets, is peculiarly simple, yet not to the extent of depriving this tradition of its importance in Soviet practice.[42]

[41] *Infra*, pp. 179–180.

[42] A description of this ceremonial is given in Sabanin, *Posol'skoe i Konsul'skoe Pravo*, p. 109 "The Chef de Protocol of the People's Commissariat for Foreign Affairs escorts the Representative and his suite to the Kremlin, where the Representative is met by the Commandant of the Kremlin and by a Guard of Honor consisting of 6–7 double-sentries placed along the passage from the hall to the *salle de la reception* The Chef de Protocol then escorts the Representative into this Audience Hall (usually one of the halls of the Grand Palace), announcing [him in] his [official] capacity. Here are awaiting the Chairman of the Central Executive Committee and one or two members of its Presidium, the People's Commissary for Foreign Affairs and most of the responsible officers of that

Termination

The tenure of office of the diplomatic agent may be brought to an end by his death; if the receiving state declares him *persona non grata* and he is recalled as a consequence of this; when diplomatic relations are severed, and when war is declared. Although there is no express law relative to the termination of the office of a diplomatic agent, Soviet practice suggests that the reasons just enumerated are fully accepted by the communist authorities. This is substantiated both by the early history of the Soviet Régime, and by the diplomatic difficulties which the Soviet Union encountered later. The drastic change in the Government of Russia which took place in November, 1917, resulted in the impossibility of continuing diplomatic relations with the new régime. The complications that followed the Bolshevist Revolution led to several instances proving the adherence of the Soviets to the principle under discussion. Thus, in January, 1918, Mr. Diamandi, the Roumanian Minister at Petrograd, was requested to withdraw as Minister, and to leave Russia within twenty-four hours, since the Decree of the Council of Peoples' Commissaries of January 13/26, 1918, declared diplomatic relations with Roumania severed; a similar request to withdraw as Ambassador was sent in April of the same year to Noulens, the French Ambassador at Petrograd. Gradually, other foreign ministers accredited to Petrograd were forced to leave Russia, the consular officers following suit in the latter part of the same year. The severance of diplomatic relations with Great Britain and China in 1927, and with Mexico in 1930, complete the list of instances showing the Soviet understanding of the ways of terminating the tenure of a diplomatic office.

Person of Diplomatic Agent

The whole body of rules governing diplomatic intercourse must be studied in the following aspects: persons, diplomatic duties, and diplomatic privileges. As to the first, it is the general rule that no diplomatic agent will start out upon his mission before assurance is obtained that he is *persona grata* to the receiving state. In case such *agrément* is not accorded, no reason need

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Commissariat After the exchange of addresses (*discours d'audience*), presentation of letters of credence, and mutual introduction of those present, the Representative is privately received by the Chairman of the Central Executive Committee. Thereafter the Representative departs accompanied by the Chef de Protocol."

be given for its refusal, nor does this imply any lack of courtesy to the sending state.[48] Although there is no definite rule, nationality, religion, and personal characteristics may be referred to as the most common reasons for refusal of the *agrément*. In recent times the issue of sex may be added to the above.

The nationality or allegiance of the diplomatic agent has always been an essential consideration in making an appointment to a diplomatic post. The general rule is that no state will accept its own national as a diplomatic agent of a foreign country. In the Soviet republics prior to the formation of the Soviet Union, the representatives plenipotentiary were mutually sent from one republic to another without much emphasis being laid on the national status of these agents. The question of their national allegiance was never raised in practice and never gave any cause for conflict in Soviet Russia. Every agent was looked upon in the light of his subordination to Soviet law, rather than in the light of his technical allegiance to one of the Soviet Republics. Upon the formation of the Soviet Union, the representatives plenipotentiary of the R.S.F.S.R. and of the separate Republics, reciprocally accredited to the Council of Peoples' Commissaries of such Republics, automatically became attached to the Council of Peoples' Commissaries of the Soviet Union, thus losing their international functions. International status was likewise lost by the representatives plenipotentiary of the R.S.F.S.R. accredited to the separate Soviet Republics, for with the formation of the Union they became departmental officials of the Union attached to the Council of Peoples' Commissaries of the corresponding republics. The whole foreign policy being transferred to the central authorities of the Union, they all became departmental officers whose status was governed by federal laws of the Soviet Union.

Soviet laws do not contain any provision forbidding a Soviet citizen being accepted in Moscow as a diplomatic agent of a for-

[48] The case of Mr Kelley of 1885 was to a certain degree a prototype of the Rakovsky incident in 1923, when the Court of St James refused to accept C. L. Rakovsky as Soviet Representative. The difference was that here the refusal took place even after *agrément* had been accorded, the reason being Rakovsky's statement that his main purpose in going to Great Britain was to prompt the interference of the Third International in British affairs

eign country, although Article 9 of the Statute of January 14, 1927, provides that "The consular agents of foreign states must be nationals of the states which they represent [*sic*]."[44] This article, however, refers only to consular officers, and not to diplomatic agents.

Religion and the social and personal characteristics of diplomatic agents are of little concern for the Soviet authorities. As to the first, denying any form of religion, and simultaneously granting freedom of exercising all forms, the Soviet Government prefers to maintain an external indifference on this point. As to the social and personal characteristics of diplomatic agents, the Soviet Régime leaves it to the discretion of the receiving state to decide whether the proposed agent is *persona grata* or not

The question of sex of the diplomatic agents is gradually becoming an important issue. The majority of contemporary states are inclined to refuse to accord *agrément* when the proposed agent is a woman. It is true, however, that in recent practice some states have overlooked this fact. The examples of Mexico and Norway, and more recently of Sweden, that severally consented to receive the Soviet Ambassadress Madame Kollontai illustrate this new tendency.[45] Despite the lack of any concrete evidence, in view of the attitude of the Communist régime toward the equality of sexes, it may be safely assumed that there would be no refusal on the part of the U.S.S.R. to accept a woman as a foreign diplomatic agent. In fact the R.S.F.S.R. afforded an instance of the acceptance of a woman as the representative from another Soviet Republic, when in 1921 Madame Sophie Goncharsky was received at Moscow as the Diplomatic Representative of the Far Eastern Soviet Republic (D.V.R.).

Rank

The next problem connected with the person of diplomatic representatives or agents is that of their diplomatic rank. From the very beginning of the Soviet Régime the problem of the rank of the diplomatic representative received careful consideration. Although it became evident immediately after the Bolshevist Revolution in November, 1917 that the Soviet Régime could not

[44] *Supra*, p. 169

[45] *Cf.* recent appointment of Ruth Bryan Owen to represent the United States of America at Copenhagen.

expect to have normal diplomatic intercourse with other states, the Soviet law makers deemed it necessary to settle at once their attitude toward the whole problem of diplomatic intercourse. Their first move, as already mentioned, was to abolish the traditional distinctions between the ranks of diplomatic agents. The Decree of May 22 (June 4) 1918, established a single rank of "representative plenipotentiary" which replaced all the four generally accepted classes of diplomatic representation of the former Russian Empire. To quote it in part:

"The R.S.F.S.R. in its international relations rests on the recognition of complete equality of large and small nations.

"In conformity with this, and to abrogate Arts. 826 and 827 of the Statute on Ministries (Code of Laws, I, p. 2. bk. 5) the Council of the Peoples' Commissaries decrees:

"1. To abolish the ranks of ambassadors, ministers and other diplomatic representatives and to call all representatives of the Russian state accredited to foreign states Representatives Plenipotentiary of the R.S.F.S.R."

The second paragraph prescribes that all foreign representatives accredited at Moscow be considered equal, irrespective of their rank, the same general term "Representative Plenipotentiary" being applied to them in so far as the Soviets had to deal with them.[46] It must be noted that this Decree of 1918 never found express legal confirmation after the U.S.S.R. was formed. The uninterrupted application of its principles by the Union, however, suggests that the provisions of this decree remain operative, acquiring thus the force of customary law.

Putting this decree into actual practice proved to be rather difficult. The illusory solution by national legislation of this problem of diplomatic rank did not solve the difficulty in its international aspects. Furthermore, the appearance in international diplomatic life of agents with an unfamiliar rank produced very unfavorable conditions to further the development of normal diplomatic relations between the Soviet State and the outside world.

Having established a single rank for all their diplomatic repre-

[46] *Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1917–1918, p. 481.

sentatives, the Soviet authorities had to work out ways by which these agents might receive in the countries of their assignment their due prerogatives, so as not to offend the political dignity of the régime which they represented. To solve the problem with which they were confronted abroad, the Soviet authorities were frequently constrained to resort to special international agreements in derogation of the provisions of their own legislation. Thus in the exchange of notes of June 15, 1924, between the U.S.S.R. and China it was agreed that the diplomatic representatives of these countries were to rank as ambassadors.[47] An official dispatch in *Izvestiia*[48] of December 25, 1928 announced that

"friendly relations between Afghanistan and the Union of Socialist Soviet Republics . . . had found further expression in a recently concluded agreement for the mutual elevation of their representatives—the Soviet representative in Kabul and the Afghan representative in Moscow—to the rank of ambassador."[49]

The fact that there is no Soviet law authorizing the vesting of a diplomatic representative with one of the ranks provided for in the Regulations of Vienna is further evidence of the inconsistency between the official abolition of diplomatic rank by national legislation, and its recognition in fact in the international intercourse of the Soviets.

Whether or not the abolition of diplomatic rank by the Soviet Régime, has proved beneficial, the fact is that this idea has not been left entirely without consideration on the part of non-communist states. Indeed the matter of diplomatic ranks was revived at the First Codification Conference at Geneva in 1927. Rapporteur Guerrero, speaking for the sub-committee, suggested a similar equalization of rank: "that ambassadors, legates and nuncios should be included in the same class and designation with envoys or ministers plenipotentiary, including resident minis-

[47] Another illustration of this inconsistency is found in the Soviet Naval Code of 1925. In the parts dealing with the exchange of courtesies between the Soviet diplomatic representative and the naval authorities, and with the proper salute, it recognizes the rank of ambassadors, ministers plenipotentiary and even ministers-resident.

[48] The Official Gazette of the Soviet Government.

[49] *Izvestiia*, Dec. 25, 1928.

ters." At the same time the sub-committee proposed the title of "ambassador" to designate "the representatives of the first three categories of the Regulations of Vienna, as completed by the Aix-la-Chapelle Protocol." [50]

Suite

As to the suite of the diplomatic representative, the Soviet laws and practice show very little deviation from the generally accepted international practice. It varies in number according to the importance of the mission; counsellors, secretaries, military and naval attachés and others are found on the Soviet Foreign Service list. Those who enjoy diplomatic privileges according to the "norms of international law" are limited to the diplomatic representatives, the counselors, the first, second and third secretaries, and the attachés.[51]

An important practical innovation may be seen, however, in the dual functions attributed to commercial attachés, who traditionally are nothing but guardians of the commercial interests of their respective states in the field of foreign trade. The Soviet commercial attachés differ from their colleagues from non-communist states in that they have additional capacity to conclude independent trade contracts, which in Soviet practice very often acquire the character of political agreements

Trade Representative

The functions of the Soviet Trade Representatives combine both those of commercial attachés in the ordinary sense of the term, *i.e.*, the collection of information on commercial and economic matters, and those of business agents, *i.e.*, the regulation and execution of business transactions, the right to engage in such transactions being reserved solely to the state.

The principal legal embodiment of this dual character of Soviet Trade Representatives is found in the Statute on the People's Commissariat for Foreign Trade, of November 12, 1923. To quote in part the provisions contained therein:

"Art. 23: The Trade Missions are organs of the People's Commissariat for Foreign Trade [at present of the People's Commissariat for

[50] League of Nations, Committee of Experts for the Progressive Codification of International Law. Second Report to the Council of the League of Nations; A 15, 1928, V. Annex to Questionnaire No 10, pp. 47–48.

[51] Statute on Diplomatic and Consular Representatives of Foreign States in the U.S.S.R. (*Sobr Zak i Rasp. S.S.S.R.*, 1927, I, p. 68).

Trade] and are included in the diplomatic missions of the U.S.S.R. abroad, forming at the same time part thereof."

"Art. 27. The Trade Missions execute functions which are of two kinds—regulatory and business. To the first belong: (*a*) observation of the general economic situation of the country of their sojourn, (*b*) study of the local markets and information; (*c*) oversight over the execution of the provisions of the treaties of commerce and economic agreements concluded between the U S.S.R. and the respective country, and participation in drafting new treaties or agreements. . . ."

"Art. 28: . . . To the second belong. execution of the plans of the People's Commissariat for Foreign Trade and other organs of the U.S.S.R., and of business transactions to the order of commercial organs of the People's Commissariat for Foreign Trade . . . of coöperative, municipal and private organizations and persons who have permission to engage in export and import business." [52]

Not only did the Soviet lawmakers have to outline the scope of the functions of their commercial attachés, or trade representatives, but they had to secure for these agents a status which would assure the maximum of commercial guaranties for the foreign firms trading with the Soviets. The best way to do this was to secure for them the status of diplomatic agents, and the best method of doing this was through international treaties. The provisions of the numerous treaties of commerce entered into by the Soviets prove that this purpose was achieved more than efficiently. These treaties, which secure to the Soviet Trade Representative the status of a member of the diplomatic corps in the country of his assignment, are further evidence of the dual scope of his functions.[53]

[52] *Sist. Sobr. Deistv. Zak S.S.R.*, I, pp 88–96

[53] *Cf.* Article 3 of Treaty with Italy of Feb. 7, 1924, (*Sborn. Deistv. Dogov*, II, 1925, p 36). This article outlines the functions and the status of the personnel of the Trade Commissions The principle of extraterritoriality was made applicable to the Trade Commissioner and members of his official suite, as well as to the quarters occupied by the missions. To conform with Soviet national laws, the Trade Commission was recognized as an integral part of the diplomatic mission, the right of using code messages, and immunity from legal jurisdiction being additional privileges extended to the Soviet Trade Commissions This established a precedent which was followed later in almost all commercial treaties entered into by the Soviet Government *Cf* Arts 2–8 of the Treaty with Germany of Oct 12, 1925 (*ibid*, III, pp 82–83; LIII, 7, L N T S); Article 4 of the Treaty with Norway of Dec 15, 1925 (*ibid.*, III, p 115; XLVII, 10, L.N.T S), Articles 10–16 of the Treaty with Turkey of Mar 11, 1927 (*ibid.*, IV, pp 104–105); Article 5 of the Treaty with Latvia of June 2, 1927 (*ibid.*, IV, p 63; LXVIII, 321, L N T S.); Article 17 of Notes with Persia of Oct 1, 1927 concerning mutual trade relations (*ibid*, IV, p 79); Articles 17–22 of the Treaty on Commerce and Naviga-

Seniority

Distinct from the legal problem, though important from the point of view of ceremonial in international law, stands the problem of seniority of diplomatic agents in the countries of their sojourn. Having abolished gradation in the ranks of diplomatic agents the Soviet régime was forced to meet the unavoidable consequences of this innovation. In non-communist states, seniority is determined by the provisions of Articles 4 and 6 of the Regulations of Vienna. In certain cases, however, exceptions are made to the provisions of Article 4 with the result that seniority is determined not by the date of arrival of the diplomatic agent, but by the date of presentation of the letters of credence. Although there is no direct indication to this effect in Soviet laws, it is safe to assume that this departure from Article 4 of the Congress of Vienna is accepted also by the Soviets. The fact that the time of presenting the credentials is always more exact than the time of arrival speaks in favor of this conclusion.

The problem of seniority acquires a new aspect when the head of the state which the diplomatic agent represents dies, or when the political régime is changed. In such cases the accepted rule is that if the head of the diplomatic mission retains his post his letters of credence are usually renewed. If the change of political régime takes place in the receiving state, and if the representative is *persona grata* to the new government, his letters of credence will be renewed. This might effect his seniority in the diplomatic corps in the country of his sojourn were it not for a custom to the contrary. In Moscow today there are accredited agents who held offices there as representatives to the R.S.F.S.R. before the formation of the Union.

A few words may be said about the seniority of the military attachés. Of the two ways of determining their seniority, either by their rank or by the time of their arrival, in the diplomatic corps accredited to the Government of the U.S.S.R. their seniority is determined by the time of their arrival in Moscow, and not by their rank.

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tion with Estonia on May 17, 1929 (*ibid.*, VI, 1931, p. 69; XCIV, 324, L.N.T.S.); and Article 7 of the Convention on Commerce and Navigation with Greece of June 11, 1929 (*ibid.*, VI, 1931, p. 45). For other treaties *cf.* Appendix XXIV.

The list of the diplomatic corps is published in all countries in the form of circulars which are distributed exclusively among the officers of the diplomatic service of the country of sojourn and among the members of the diplomatic corps. The fact that in the U.S.S.R. such lists are published in the generally accepted fashion, and that the diplomatic representations are placed according to the French alphabet show that the Soviet Union is definitely conservative as far as international practice in this respect is concerned.

Diplomatic Duties

The duties of the diplomatic representatives have comparatively little to do with the international law on diplomatic representation. It falls rather within the province of national administrative law or of national consular law to determine the rules which the agents must follow both in regard to the discipline of the personnel and in regard to the performance of their duties. The only duty of the diplomatic representative expressly stipulated in international law is that he conduct the necessary intercourse with the government of the country of his sojourn through its minister of foreign affairs. In Soviet law this subject is regulated by the Decree of the Central Executive Committee of the U.S.S.R. of August 27, 1926, dealing with the rules of communication between the Soviet state organs and officials, and the state authorities and officials of foreign countries.[84] Article 2 of this decree prescribes the use of diplomatic channels for such communications, while Article 3 states that the People's Commissariat for Foreign Affairs shall serve as the intermediary.

Diplomatic Privileges

The whole question of diplomatic privileges arises from the fact that the sovereignty of the state in its international relations must be preserved to the fullest possible extent. Logically this suggests the establishment of a régime which on the one hand would permit the sending state (on the basis of strict reciprocity) to extend to a certain degree the exercise of its jurisdiction beyond its territorial limits, and on the other hand would invite the receiving state to renounce to a certain limited extent the exercise of its sovereign authority in favor of the persons representing another sovereign state. To quote Sabanin:

[84] *Sobr. Zak i Rasp S.S.S.R.*, 1926, I, pp. 1018–1019 For text see Appendix X

"The receiving state in its territory must guarantee to the [diplomatic] representative the degree of formal independence inherent in the conception of an independent state." [55]

The communist authorities were forced to seek a solution of the problem of diplomatic privileges at once in conformity with their abstract theories of unlimited sovereignty and with the practical necessity of making definite concessions to the capitalistic states surrounding the Soviet Union. However, to protect as much as possible the idea of inviolability of state sovereignty, the Soviet authorities made such concessions only upon condition of strict reciprocity.

Of much greater importance for Soviet jurists was the problem of justifying the existence of diplomatic privileges, which non-communists base upon the necessity of freedom in the execution of their representative functions by the agents, as well as upon the conception of prestige and dignity. At first it appears difficult to refute the communist argument that the existence of these privileges is a superfluous and reactionary phenomenon which should be opposed in principle by every socialist. The fact, however, that the Soviet Government recognizes the necessity of the existence of such privileges proves that this theoretical condemnation of them is found impractical. The communist régime, after taking over power in 1917, did not fail to make use of these privileges as a means to protect their sovereignty in non-communist states. In other words, the Soviet Government recognizes the necessity of these privileges, and justifies them on the following three grounds: First, there must be mutual agreements between states to provide for the exercise of a certain degree of state sovereignty within the territory of other states through the diplomatic representative. Second, the diplomatic representative must be placed in a position to perform his duties efficiently; and third, a diplomatic agent must support and manifest the prestige and dignity of the state he represents. These diplomatic privileges in general may be divided into several classes, of which inviolability, immunity from local jurisdiction, and those of a ceremonial nature are the most important.

[55] Sabanin, *Posol'skoe i Konsul'skoe Pravo*, p. 127.

Inviolability

The inviolability of diplomatic agents must be analyzed from the following aspects: personal inviolability and protection of his person and dignity against the actions of a third person, the inviolability of his residence and the embassy, and inviolability of his movable property. The Soviet practice shows that the Communist Régime is not in favor of applying any kind of repression to foreign diplomatic agents. During the period 1918–1919 there were instances when the inviolability of foreign diplomatic agents accredited to the Soviet Government was limited, to the extent that they were refused the right of free departure from the Soviet Union. These restrictions, however, were explained by the Soviet authorities as reprisals for violations of their inviolability suffered by Soviet representatives abroad. Thus, when in the beginning of 1918 the political conditions in Bessarabia came to a point where the Roumanian Government attempted to annex this part of the former Russian Empire,[56] the Soviet authorities at Petrograd arrested the Roumanian Ambassador Diamandi. The diplomatic corps at Petrograd conveyed a collective protest to Lenin on the following day, with the result that the Council of Peoples' Commissaries issued an order by which Mr. Diamandi was released next day. On January 13, 1918, however, another decree was passed by the Council of Peoples' Commissaries by which diplomatic relations with Roumania were severed, and the Roumanian diplomatic mission was ordered to leave the Soviet Union within twenty-four hours.[57]

Person

Another instance of the same nature took place in February, 1921, when the Menshevist Government of the Georgian Republic arrested the diplomatic mission of the R.S.F.S.R. in Tiflis headed by Mr. Sheiman. In protest against the breach of the inviolability of their diplomatic agent the authorities at Moscow arrested the Georgian diplomatic mission in Moscow [58]

[56] This was actually accomplished in the spring of 1919 in spite of the fact that there was an Agreement signed by the R.S.F.S.R. and Roumania on March 5, 1918 (see Appendix XIV) recognizing Bessarabia as an integral part of the Soviet Republic. (For protest sent by Ukrainian S.S.R. on February 7, 1919 to the Paris Peace Conference, see Kliuchnikov i Sabanin, *as cited*, II, p. 226.)

[57] The Decree reads in part: " . . As a protest and warning, the Council of Peoples' Commissaries arrested for a short period of time the Roumanian Ambassador. This measure proved of no avail . . " (*Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1917–1918, pp. 247–248).

[58] *Izvestia*, Mar. 7, 1921.

The same point of view was taken in the note of May 31, 1929 which the Soviet Government communicated to the Chinese diplomatic representative in Moscow protesting against the raid of the Northern Chinese generals on the Soviet consulate in Harbin. Among other things this note said:

". . . since the Chinese authorities by all their actions have proved openly their unwillingness and inability to conform to the generally accepted rules of international law, the Soviet Government henceforth does not consider itself bound by these norms in respect of the Chinese representation in Moscow and Chinese consulates in Soviet territory, and is forced therefore to declare that the principle of extraterritoriality to which they are entitled by international law henceforth shall not be applied to the Chinese diplomatic missions and consulates in the U.S.S.R." [59]

On July 6, 1918, the German Ambassador, Count Mirbach-Garff was assassinated in Moscow. The Soviet Government immediately expressed its regrets, to which the German Government responded by demanding that an armed German military detachment should be admitted to Moscow for the protection of the German mission against such possibilities in the future. At the meeting of the All-Russian Central Executive Committee, on July 15, 1918, Lenin said that this request could not be granted,[60] but that the Soviet Government guaranteed to protect the mission in future. A compromise was reached upon learning of this promise.

On May 10, 1923, Mr. Vorovsky was assassinated in Lausanne. Mr. Vorovsky was the Representative Plenipotentiary of the R.S.F.S.R. in Italy, and had come to Lausanne as an official delegate of the Soviet Union to the Lausanne Conference. The result of the conflict which arose between the Soviet authorities and the Swiss Government was that an economic boycott was declared by the Soviet Union against Switzerland.[61] This boycott lasted almost four years, or until May 4, 1927, when a decree was passed by the Central Executive Committee of the U.S.S.R. declaring it at an end.[62]

[59] *Pravda*, June 2, 1929 (as quoted in Sabanin, *as cited*, p. 133).
[60] Lenin, *Sobr. Soch.*, XV, p. 356.
[61] Decree of the All-Russian Central Executive Committee of June 20, 1923 (*Sobr Uzak i Rasp. R.S.F.S.R.*, 1923, I, pp. 1039–1040).
[62] *Sobr. Zak. i Rasp. S.S.S.R.*, 1927, I, pp. 491–492.

On June 7, 1927, Mr. Voikov, the Soviet Representative Plenipotentiary in Poland, was fatally wounded and died soon afterwards. The Soviet Government reacted to this violation of the inviolability of a diplomatic agent with three demands: punishment of the person at fault, admission of a Soviet representative to take part in the investigation, and the promise of the Polish Government to take the necessary measures to stop the activities of anti-communist elements within the territory of Poland.

The laws of several countries foresee the possibility of difficulties of this nature and include in their criminal codes provisions relative thereto. When in 1922 the draft of the first project of the Soviet Criminal Code was discussed, a suggestion was made to the effect that any attempt to violate the extraterritoriality of diplomatic agents should be considered as a qualified crime. In the final analysis, however, the Central Executive Committee did not include such a provision in the Code. Nevertheless, although not specifically embodied, this general idea runs through the whole section of the Soviet Criminal Code dealing with offences against the state.

The new Criminal Code of 1926 in Article 58, clause 5, provides that

". . . inducing foreign governments or social organizations therein, by communicating with their representatives or using forged documents or by any other means, to declare war against the Soviet Union, or . . . to sever diplomatic relations, or to denounce treaty agreements calls for the supreme penalty." [68]

Residence and Embassy

So much for the Soviet attitude toward the personal inviolability of diplomatic agents. In regard to the application of this principle to the residence of the diplomat and to the embassy, Article 4 of the Decree of January 14, 1927, states very clearly that "the quarters occupied by diplomatic missions as well as the quarters occupied by the persons enumerated in Article 2 and by their families are inviolable. . . ." [04] In the Treaty of Commerce with Germany of October 12, 1925, Article 5 provides that the

[68] *Sobr. Kodeksov R.S.F.S.R.*, 4-e izd., p. 667.
[04] *Sobr. Zak. i Rasp. S.S.S.R.*, 1927, I, p. 69.

"quarters occupied by the Trade Delegation are protected in conformity with the principles of extraterritoriality." [65] Article 4 of the Treaty of Commerce and Navigation with Norway of December 5, 1925, provides that the principle of extraterritoriality shall be applied to the quarters of the [Soviet] Trade Delegates in Oslo, irrespective of the fact that they may be located in a building other than that occupied by the diplomatic mission of the Soviet Union.[66]

The reaction of the Soviet Government to the violation of immunity involved in the search made by the German authorities on May 3, 1924, of the quarters occupied by the Soviet Trade Delegation in Berlin, and the examination by the English authorities on May 12, 1927, of the quarters of "Arcos Ltd." and of the Russian Trade Delegation in London conformed to the general practice. In the first case the conflict was settled only after extensive diplomatic correspondence; [67] in the second instance the protest of the Soviet Government resulted in the receipt of a note from the British Government on May 26, 1927, stating that diplomatic relations between Great Britain and the U.S.S.R. were henceforth severed.[68] Another illustration of the same nature is found in the examination of the quarters of the Soviet Diplomatic Mission in Peking by Chang-Tso-Lin's forces on April 6, 1927. Here too the protests of the Soviet Government were based on adherence to the principles of the inviolability of the quarters occupied by diplomatic missions.[69]

Closely connected with the inviolability of the quarters of diplomatic agents is the principle of the right of asylum. The attitude of the Soviet authorities is best seen from Article 4 of the Statute of January 14, 1927:

[65] *Sborn. Deistv. Dogov*, III, 1927, p 83; LIII, 7, L.N.T.S.

[66] *Ibid*, p. 115 Similar are the provisions made in Article 5 of the Treaty with Latvia of Aug 11, 1920 (II, 196, L.N.T.S), in Article 3 of the Convention with Sweden of Mar. 15, 1924 (XXV, 252, L.N.T.S), and in Article 18 of the Treaty with Estonia of Feb. 2, 1920 (XI, 30, L.N.T.S) Furthermore this principle of extraterritoriality is found also in Article 12 of the Treaty of Commerce and Navigation with Turkey of Mar 11, 1927, and in Article 17 of the notes exchanged between the People's Commissariat for Foreign Affairs of the U.S.S.R. and the Minister of Foreign Affairs of Persia on October 1, 1927.

[67] Kliuchnikov i Sabanin, *as cited*, III, pp. 377ff.

[68] [Great Britain] Cmd 2895, Russia No. 3 (1927), pp. 69–70; also Tanin, *10 let vneshnei politiki S.S.R., 1917–1927*, pp. 164–173.

[69] Tanin, *as cited*, pp. 163 and 214

"The quarters occupied by the Diplomatic Missions, as well as the quarters occupied by persons enumerated in Art. 2, or by their families, are inviolable. They can be searched only with the consent of the diplomatic representative. . . . However, the inviolability of these quarters does not imply the right to keep anybody therein by force, nor [does it imply] the right of giving asylum to persons whose arrest has been sanctioned by the authorized organs of the U.S.S.R., or of the Union republics." [70]

Obviously the last provision of this article is contrary to the general rule that the inviolability of the quarters and the right of asylum are not to be limited. Since, however, practice proves that diplomatic complications seldom arise except as regards political crimes, the conclusion is justified that the Soviet law in this respect is mainly interested in acquiring or preserving jurisdiction over persons who have committed political, chiefly counter-revolutionary, offences against the Soviet State and seek the protection of the premises of foreign diplomatic missions in the U.S.S.R.[71]

Movable Property

As to the inviolability of movable property, the Statute of 1927 makes no mention of the subject. The treaties of the Soviet Union, however, afford several instances proving that this principle of international law has been fully recognized by the Soviet régime, and followed in accordance with the established practice of other states. They all provide that the objects which, according to the rules of international law, are considered necessary for the official activity of the diplomatic agents are inviolable.[72]

Exemption from Local Jurisdiction

On the recognized right of inviolability of diplomatic agents rests the principle of their immunity or exemption from the criminal, civil and administrative jurisdiction of the state to which they are accredited. The Statute of January 14, 1927, proves that the Soviets do not deviate from the generally accepted rule of granting to diplomatic agents immunity from the criminal jurisdiction of the Soviet courts. Article 2 of this Statute reads in part:

[70] *Sobr. Zak. i Rasp. S.S.S.R.*, 1927, I, p. 69.

[71] Such an attempt was made by the assassin of Uritsky on Aug 30, 1918, when he sought asylum in the British Embassy in Petrograd.

[72] Art. 7 of the Treaty with Germany of Oct 12, 1925 (LIII, 7, L.N.T.S.); Art 13 of the Treaty with Turkey of Mar 11, 1927; Art. 5 of the Treaty with Latvia of June 2, 1927 (LXVIII, 321, L.N.T.S.), Art 6 of the Convention with Sweden of Oct. 8, 1927 (LXXI, 411, L.N.T.S.).

"In particular, the diplomatic representatives and the members of the diplomatic missions: . . .

(*b*) are not subject to the jurisdiction of the courts of the U.S.S.R or of the Union Republics in criminal cases, with the exception of instances when there is consent of the respective foreign state to that effect, and are subject to the jurisdiction of the courts of the U.S.S.R. and of the Union Republics in civil cases only in so far as it is provided by the rules of international law or by agreements with the respective states, likewise, they are not obliged to give any testimony, and in case of their consent to do so, are not obliged to appear in court." [73]

These provisions speak for themselves. In the case of violation of law by a diplomatic agent, the receiving state has to decide whether the infringement should be left unnoticed. The case of the French Ambassador Noulens in Russia in 1918 shows that the Soviet Government is aware of the cases when a state may order the agent to leave the country, or even place him under restraint.[74]

The exemption of diplomatic agents from the civil jurisdiction of the state to which they are sent is not so complete as in the case of criminal jurisdiction. The second part of the Statute of January 14, 1927, refers to rules of international law which permit a civil suit to be brought against a diplomatic agent. Since no enumerations of these rules is given therein, and since no evidence is found in Soviet practice defining the scope thereof, the conclusion is that the Soviet Government admits the principle that unless the diplomat voluntarily assume another character he cannot be proceeded against in the civil courts.

There are two channels through which civil complaints may be brought against diplomatic agents: either the Ministry of Foreign Affairs of the receiving state, or the courts of the country which the diplomatic agent represents. Of these two channels, use of the first is the more common. It may likewise be resorted

[73] *Sobr Zak. i Rasp S.S.S.R.*, 1927, I, p. 68. *Cf* also Decree of June 30, 1921 (*Sobr. Zak. i Rasp. R.S.F.S.R*, 1921, p. 398); Instructions of the People's Commissariat for the Interior, People's Commissariat for Foreign Affairs and of the G.P.U. of Aug. 5, 1921, No. 296, and of the People's Commissariat for Foreign Affairs of Aug. 19, 1925, No 315 (Egor'ev and others, *as cited*, pp. 228–232); Circular of the People's Commissariat for the Interior of Apr. 23, 1925, No. 224 (*Bulleten' NKVD*, 1925, No. 18); the Decree of the Central Executive Committee of the U.S.S.R of Oct. 31, 1924 (*Sobr. Zak. i Rasp S.S.S.R*, 1924, I, p. 372) and Art. 178 of the Code of Criminal Procedure of the R.S.F.S.R. of 1923 (*Sobr. Kodeksov R.S.F.S.R.*, 4-e izd., p. 959).

[74] Tanin, *as cited*, pp. 30 and 46. Also, Kliuchnikov i Sabanin, *as cited*, III, p. 115. See also the instance of Mr Diamandi, *supra*, p. 187.

to in the opposite situation, where a diplomatic agent in his diplomatic capacity brings a suit against a third person. In 1927, a foreign mission in Moscow brought a suit through the office of the People's Commissariat for Foreign Affairs against a housing corporation, with the result that the Supreme Court of the R.S.F.S.R. recognized the People's Commissariat for Foreign Affairs as the proper plaintiff, and decreed a certain sum of money to be paid by the defendant to it, to be forwarded to the said foreign mission.[75]

The exemption of diplomatic agents from the administrative jurisdiction of the receiving state is admitted by the Soviet authorities in the Decree of June 30, 1921. Article 3 reads in part:

"Diplomatic representatives and the members of the diplomatic corps enjoy the following rights and privileges:

(*a*) personal inviolability, by virtue of which right the said persons cannot be arrested either by *administrative* orders or by the orders of the courts." [76]

Although the Statute of 1927 does not contain any corresponding provisions, the attitude of the communist authorities towards criminal and civil jurisdiction as shown above leads to the conclusion that also in the administrative field the Soviet authorities follow the generally accepted rules of international practice.

Trade Representations

It is of interest here to analyze briefly the application of these principles of immunity to the Trade Representations of the U.S.S.R. accredited to foreign states. The peculiar character of these quasi-diplomatic Soviet agencies has already been briefly mentioned. The general rule of international law in non-communist states is that no diplomatic privileges are granted to a state agent in so far as he engages in trade transactions. This obviously conflicts with the Soviet theory of the status of their Trade Representations abroad, for, according to Soviet laws, the Soviet Trade Representations are actually integral parts of their diplomatic missions. Indeed, it can readily be set forth by the Soviets that it is the communist state, rather than the agent, that engages

[75] Sabanin, *as cited*, p. 167 *Cf.* also Decree of June 30, 1921 (*Sobr. Uzak. i Rasp. R S F S R.*, 1921, pp 398–399).

[76] *Sobr. Uzak. i Rasp. R S.F S R*, 1921, pp 398–399. (Italics by author)

in business. On the other hand it is always necessary to take into consideration the problems of state prestige and policies of state which cannot always be made public. Finally, it is essential for foreign firms to secure a commercial guaranty that these Trade Representations in their business transactions will not claim diplomatic immunity (which they otherwise would, as an integral part of the diplomatic mission), and so hinder the enforcement of their civil-law remedy by these firms The consequence of the efforts to solve these contradictory problems was that in the Soviet system the status of the Soviet Trade Representatives abroad has acquired a character quite novel in international law.

The main characteristics of this new legal institution are as follows: it is recognized that the monopoly of foreign trade in the U.S.S.R. belongs to the state; it is recognized also that the Soviet Trade Representation is an integral part of the Soviet Diplomatic Mission and that therefore the head of the Trade Representation and a limited number of his suite enjoy the privileges belonging to the diplomatic corps. However, the juridical acts of the Soviet Trade Representation abroad, as well as all economic obligations undertaken by the latter, are subject to the local civil jurisdiction. The Government of the Soviet Union recognizes itself as responsible for all trade transactions concluded abroad by its trade delegations. Hence it must be assumed that warrants may be served upon the property of the U.S.S.R. abroad, except upon articles which according to the generally accepted principles of international law are recognized as necessary for the execution of official business by diplomatic and consular officers in foreign countries.[77] It must be noted, however, that in the Treaty with Latvia of June 2, 1927, and in the Convention with Greece of June 11, 1929, provisions are made that no measures of an administrative character shall be applied to the contracts entered into by the Soviet Trade Delegations in the contracting countries. The Convention with Sweden of October 8, 1927, in Article 7 provides that the Soviet Trade Mission must pay to the Swedish Government the established

[77] *Cf.* Protocol with Lithuania of Aug. 29, 1931. (Text in Appendix XXII)

income tax, with the proviso that the amount of this tax shall be determined on the basis of a declaration of the Soviet Trade Representation, and that the Commercial Delegation ". . . shall not be obliged to furnish the competent authorities with information other than that which is necessary to determine the lump sum mentioned above." [78] Treaties with Germany, Latvia, and Estonia show that entry of the Soviet Trade Representations in the respective trade-registers of the country of their establishment is not necessary.[79] The names of the persons authorized to represent the Trade Representations in these countries must be published in the local official organs.[80] Finally, in most of these treaties the principle of reciprocity is followed, the same privileges being granted to the foreign trade agencies in the U.S.S.R. when such agencies are established therein. However, a special protocol was attached to the notes exchanged between the Soviet Union and Persia, which provided that should a Persian trade mission be established in the Soviet Union this mission should function only as an office for information.[81]

Other privileges enjoyed by diplomatic agents are exemption from taxation, exemption from customs duties, the right of free communication with the home government, the right of preferential use of means of communication, the right of freedom in their private life, provided that the customs of their country do not conflict with the standards of civilized nations, and, finally, certain ceremonial privileges.

Taxation

The rule of international law today is that diplomatic representatives pay no direct taxes, either national or local, to the country to which they are accredited.[82] The Soviet Statute of January 14, 1927, exempts diplomatic representatives from all direct taxes, both state and local, provided that the principle of reciprocity is agreed to:

[78] Clause 2 of this article reads "The taxable income shall be a lump sum, representing 4% of the total turnover on the transactions effected by the Commercial Delegation." (LXXI, 415, L.N.T.S.)

[79] *Supra*, FN 53, p. 183

[80] *Supra*, FN 53, p. 183

[81] *Supra*, FN 53, p. 183

[82] *Cf* Resolution of the Institute of International Law on Diplomatic Immunity, 1895 (Art. 11); Havana Convention on Diplomatic Officers of 1928 (Art. 18) and New York Draft of the Institute of International Law of 1929 (Art 18), (*Research in International Law*, Harvard Law School, 1932, pp. 116–117).

"(c) [diplomatic agents] are exempt from all direct taxes, state and local, and from all personal duties, both natural [in kind] and pecuniary." [83]

The Instructions of November 29, 1924, illustrate the same rule, with the exception however, that diplomatic agents are not exempt from taxes on the income from buildings, lands and other property which is not in their personal use.[84] Neither are they exempt as to the income from industrial and business enterprises when engaged therein for their personal benefit.[85] As to indirect taxes, international law does not provide any rule forbidding a state to collect indirect taxes from a foreign diplomatic agent. This may appear at first as an instance when the diplomatic agent is subjected to the sovereignty of the country of his sojourn. However, no Soviet law authorizes the government to make forcible collection of such taxes from foreign diplomatic agents, hence the most that can be said is that this problem of international law still remains unsettled.

Customs Duties

Customs duties *per se* may justly be viewed as an intermediary step between direct and indirect taxes. Since customs duties are within the domain of national legislation, there is no uniform rule of international law, and the laws of different states vary greatly. The prevailing rule is that diplomatic agents are exempt from customs duties on everything which they have with them at the time of their first entry into the country of their assignment. As to goods consigned to the address of diplomatic agents later, some countries allow exemption from duties even then, provided that proper declarations have been secured through the respective Ministries of Foreign Affairs.[86]

The Soviet practice in regard to customs duties is quite different from that of non-communist states. The first mention of the

[83] *Supra*, p. 169. *Cf.* Art 2 of the Decree of the Central Executive Committee of the U S S R of Oct 29, 1924 (*Sobr. Zak i Rasp. S.S S R.*, 1924, I, pp. 273ff) and Art. 3 of the Decree of Nov. 12, 1923 (*Sobr. Uzak i Rasp. R S F S R*, 1923, I, p. 1055).

[84] *Vestnik Finansov*, 1924, No. 21.

[85] Circular of the People's Commissariat for Finance of the U S S R of Dec 4, 1923, No. 0422148 as published in the Circular of the People's Commissariat for Foreign Affairs of Dec 27, 1923, No 1501 *Cf* also Decrees of the Central Executive Committee of the U.S.S R of Jan. 11, 1924, and Feb. 22, 1924 (*Sobr. Uzak i Rasp R S F S R.*, 1924, I, pp. 299 and 451–454 respectively)

[86] The United States of America, Great Britain, Germany and France

problem of customs privileges for diplomatic agents in Soviet law was embodied in the Decree of June 30, 1921, which relieved diplomatic agents from all personal, natural and pecuniary duties, which included customs duties.[87] The next decree relative to this was that of October 14, 1921, by which luggage carried by diplomatic couriers for diplomatic agents was to be given the same status as diplomatic mail, *i.e.*, exemption for many duties, but under condition that it should be examined at the point of expedition by duly authorized agents of the People's Commissariat for Foreign Affairs. The contents were to conform with the prescriptions of the customs regulations, and the containers were to be jointly sealed with the seals of the Soviet Government and of the Department of Foreign Affairs of the country of the diplomatic agent.[88] The meaning of this decree was made clearer when supplementary instructions were issued on November 4, 1921, by the Council of Peoples' Commissaries.[89] These Instructions provided that diplomatic luggage might include printed material as well as articles of subsistence or general consumption, provided that the weight limits set by the R.S.F S.R. were conformed to, and that the gross weight should not exceed two poods[90] per month for each member of the foreign diplomatic mission.

These laws of 1921, however, did not prove very practical. When after 1921 the Soviet Régime was accorded *de jure* recognition by several states, the number of foreign diplomatic agents in Moscow increased considerably. Some of them considered the Soviet laws then in force as a violation of their diplomatic privileges, and protested against the limitations contained therein. On the other hand, as a result of the new economic policy, new customs tariffs were introduced by the Soviet Government on March 9, 1922. Both these facts forced the Soviet Government to take up this problem once again. On May 31, 1922, in abrogation of the Decree of the Council of Peoples' Commissaries of October 14, 1921, and of the Instructions of November 4, 1921, the Council of Peoples' Commissaries issued a decree by which

[87] Art 3, Clause "g" (*Sobr Uzak i Rasp. R.S.F.S.R.*, 1921, p. 398).
[88] Art. 2 (*ibid.*, 1921, p. 677).
[89] *Ibid.*, 1921, pp. 749–751.
[90] A pood = 36 11 pounds avoirdupois.

the property of foreign diplomatic representatives accredited to the Government of the R.S.F.S.R., imported for their personal use, was to be exempt from customs duties when arriving simultaneously with them. Property consigned to them after their arrival, destined for the personal use of the heads of the foreign diplomatic missions, was to be exempt from customs duties if such duties amounted to not more than 20,000 gold rubles per annum for the head of each foreign diplomatic mission. Goods addressed to other members of the personnel of the foreign diplomatic missions were to be subject to duty on the basis of the general Soviet customs regulations and tariffs.[91] By a special Decree of August 24, 1922, it was further explained that not only customs duties, but also excise duties were to be included in the above limit of 20,000 gold rubles.[92] This series of pre-Union Soviet laws was completed by a Decree of the Council of Peoples' Commissaries of October 27, 1922. This decree regulated the method of taking goods out of the Soviet Union by members of foreign diplomatic missions. Such goods if taken out with the head of the diplomatic mission, or when shipped not later than one month after his departure, were free from export duties.[93]

Thus improved, the earlier laws of 1921 and 1922 remain in force to the present day. That the Soviet authorities consider these laws effective and adequate is seen from the fact that when in 1925 the Customs Code of the U.S.S.R. was promulgated its Article 242 did not introduce any new rules on the subject:

"The method of transportation of goods or baggage when carried by the foreign diplomatic or consular representatives or by their associates, or when addressed to them or to the respective agencies, as well as the method of passing diplomatic couriers and of [clearing] official or personal luggage carried by them is determined by special laws and rules promulgated by the People's Commissariat for Foreign Affairs and of the United State Political Administration [O.G.P.U.]." [94]

Instead of enumerating rules on the subject, it simply refers to special laws. In conformity with this article, on August 19, 1925, provisional laws were approved concerning the transportation

[91] *Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1922, I, p. 66.
[92] *Ibid.*, 1922, I, p. 906.
[93] *Ibid.*, 1922, I, p. 1080.
[94] *Sobr. Zak. i Rasp. S.S.S.R.*, 1925, I, p. 91.

of goods belonging to the diplomatic representatives of foreign states. They included instructions to the customs officers, as well as rules regulating the transport of goods belonging to these diplomatic agents leaving the U.S.S.R. These regulations did not introduce any changes in the laws of 1921 and 1922, and the same can be said about the Statute of January 14, 1927.[95]

Communications

The privilege of free communication with the home government has been accepted as a rule. Formerly mail was the most important way of effecting this communication. In general there are two ways of carrying the diplomatic mail. In some countries it is accompanied by junior officers of the Ministries of Foreign Affairs. The usual way, however, is through the services of diplomatic couriers. The latter is the method adopted by the Soviets. The legal status of diplomatic courier and diplomatic mail are in brief, as follows. Personally, the diplomatic courier does not enjoy all the privileges and immunities accorded to members of the diplomatic missions. However, while in the performance of his duty in the interests of the diplomatic mail which he accompanies he has every reason to expect that the government authorities of the country to or from which he is going will extend to him all possible facilities.[96] The Soviet law grants to foreign diplomatic couriers the rights of inviolability, *i.e.*, exemption from arrest while in the performance of their duty, provided that the principle of reciprocity is enjoyed. The Soviet Government thus appears to follow the generally accepted rules in regard to the diplomatic status of couriers.

The problem of applying to diplomatic couriers the laws on taxation is of no practical importance, because the couriers can not be considered as permanent residents of the country within which they are charged with the expedition of the mail. As to customs duties and customs inspection, the personal effects of the courier may be examined only to the same extent as those of other foreigners entering the Soviet Union with diplomatic passports. In order to pass through the customs offices without examination, the mail which the courier accompanies must be

[95] Art 7 almost literally repeats the provision of Art 24 of the Code of 1925 For detailed information on the subject, see Arvatov i Velihov, *Tamozhennyi Ustav Soiuza S S R*, Moskva, 1925, also Egor'ev and others, *as cited*, p. 243.

[96] *Cf.* Arts 19–20 of the Postal and Telegraph Code of the U.S.S.R. of 1929.

sealed and the address must correspond to that given in the *"lettre de courier."*

The first mention of diplomatic mail in Soviet law is comprised in a very brief and inadequate reference in Article 4 of the Decree of June 30, 1921. In the Decree of October 14, 1921, and, the Instructions of November 4, 1921, the regulations were more complete and definite.[97] The weight of the diplomatic mail was limited to sixteen kilograms for each diplomatic mission, expedition of the mail being allowed twice a week, thus making the total weight thirty-two kilograms per week. On May 31, 1922, a decree was passed by which the expedition of the mail was limited to once a week, thus reducing the weight of the diplomatic mail to sixteen kilograms per week.[98] Subsequent laws [99] showed that with these exceptions the generally accepted rules of international practice in regard to diplomatic couriers and mail were followed by the Soviets, particular emphasis being placed upon the duty of "all military, civil, railway and other authorities of the R.S.F.S.R. to tender to the diplomatic couriers most considered assistance to facilitate the uninterrupted and rapid transportation of diplomatic mail." [100]

Not until the publication of the Statute of June 14, 1927, was the problem of the legal status of diplomatic couriers and mail in the U.S.S.R. defined with sufficient clearness. Emphasizing in Article 8 the principle of reciprocity in respect to diplomatic couriers, this Statute recognized the principle of personal inviolability, *i.e.*, immunity from arrest, either by administrative order or by decree of the court. Furthermore, it was once again pointed out that under no conditions could diplomatic mail accompanied by couriers be held up or opened, and that the Soviet authorities were under obligation to render all possible assistance to the couriers in order to secure uninterrupted transportation and safety of the mail.[101]

[97] Sabanin, *as cited*, p 197.

[98] *Sobr. Uzak i Rasp. R.S.F.S.R.*, 1922, I, p 626. The explanation of this decree may be that the Soviet authorities had discovered the abuse of these privileges by some of the foreign diplomatic couriers *Cf* Izgoev, "Diplomaticheskie Kontrabandisty," *Izvestiia*, June 10, 1920, and the reports on the court proceedings in the case of Maurinch, *Pravda*, June 27, 1929. (Quoted in Sabanin, *as cited*, p. 198.)

[99] *Cf. supra*, pp. 170ff.

[100] Art 3 of the Instructions of Nov. 4, 1921.

[101] For text, see Appendix XI.

The sending of telegraphic, wireless, or telephonic communications by foreign diplomatic agents is definitely permitted under Soviet law, which fact proves that the Communist Government recognizes the same rules in this respect as are generally accepted in international practice. Article 3 of the above mentioned Statute of January 14, 1927 reads:

"Diplomatic representatives of foreign states have the right of free communication with their governments and with the diplomatic representatives of their country in other states by using clear or ciphered telegrams. . . ." [102]

This has been reiterated in several agreements concluded between the Soviet Government and foreign states. Of these, reference may be made to the Convention regarding Telegraphic Communications concluded between the Soviet Government and Finland on June 13, 1922, which was superseded by a new Convention on June 18, 1924.[103] The Telegraph and Radio Convention concluded between the Soviets and Estonia on June 27, 1924 in its Final Protocol, Article 5, contains a provision to the effect that:

"in conformity with Article 5 of the Convention of St. Petersburg of 1875, the following persons and officers shall have the right of sending and of receiving telegrams: . . . diplomatic and consular agents and foreign trade commissioners." [104]

A similar provision is found in Article 18 of the Supplementary Protocol to the Postal and Telegraph Convention concluded between the Soviet Government and Poland on May 24, 1923.[105] In 1928, the U.S.S.R. adhered to the Paris Revision of 1925 of the International Telegraphic Convention of St. Petersburg of

[102] *Sobr Zak i Rasp S S S R*, 1927, I, p. 69.
[103] *Sborn. Deistv Dogov*, II, 1925, pp 89ff, XVI, 350, L N T S, and XXIX, 266, L N T S. respectively.
[104] *Sborn Deistv. Dogov*, III, 1927, p 157. *Cf* also Provisional Agreement with Latvia of Mar 3, 1921 (*ibid.*, I–II, 1928, pp 276ff); Agreements with Mongolia of Oct 3, 1924, and Feb 25, 1927 (*ibid*, I–II, 1928, pp 283ff and *ibid*, IV, 1928, p 137, respectively); Postal Convention with Persia of Apr 25, 1923 and Telegraph Convention of Apr 27, 1923 (*ibid*, I–II, 1928, pp 285ff; CX, 323, L N T S, and CX, 333, L N T S); and Convention of Aug. 2, 1929 (*ibid*, VI, 1931, p 80, CIX, 99, L N T S). *Cf.* also Postal-Telegraph Convention with Turkey of July 9, 1922 (*ibid*, I–II, 1928, pp. 291ff)
[105] *Ibid*, IV, p. 152; L, 341, L N T S

1875.[106] On October 8 of the same year, the Council of Peoples' Commissaries issued a decree announcing Soviet adherence also to the amendments to this Revision made at Bruxelles on September 27, 1928, stating that the regulations provided therein would be effective in the Soviet Union from October 1, 1928.[107]

The novel idea introduced by the Soviets of granting diplomatic privileges to the Trade Representatives forced the Soviet Government to state expressly in its international agreements that the rules relative to mail and to the free use of means of communication were to be applicable also to the trade commissioners. Article 3 of the Treaty of Commerce and Navigation with Italy of February 7, 1924, illustrates this.[108] Objection on the part of most non-communist states to the theory of according diplomatic privileges to Trade Representatives, led to the failure of the Soviet delegates to the Paris Convention in 1925 in securing universal adoption of the principle of freedom of mail and communication for Trade Commissioners.

As to other privileges of diplomatic agents, such as freedom of exercise of native religious rituals, or the establishment of their method of living according to the customs and habits of their own countries, it has already been said that Soviet laws contain no provisions limiting the freedom of foreign diplomatic agents at Moscow in these respects.

Ceremonial Privileges

The extent of the ceremonial privileges usually enjoyed by diplomatic officers cannot be determined accurately. The practice of the Soviet Union, however, shows that the Communist Régime is forced to recognize most of them. Article 2159 of the Soviet Naval Code of 1925 states that diplomatic representatives have the right of receiving salutes from the men-of-war of the countries of their sojourn. For the Soviet Representative residing in a non-communist state, these ceremonial privileges often cause considerable complications. Indeed, this problem arose at the beginning of 1922 and was considered of such great practical im-

[106] *Sobr. Zak i Rasp S.S.S.R.*, 1928, II, pp. 101–211.

[107] *Ibid.*, 1929, I, p 966. The Soviet Government has also adhered to the Postal Convention of June 28, 1929 (*Sborn Deistv. Dogov.*, VI, 1931, pp 92ff.).

[108] *Sborn Deistv. Dogov.*, II, 1925, p. 36. *Cf.* also Art 4 of the Treaty of Commerce and Navigation with Norway of Dec 15, 1925 (*ibid*, II, 1925, pp. 115ff, XLVII, 10, L.N.T.S.); and with Latvia of June 2, 1927 (*ibid*, IV, 1928, p. 64, XLVIII, 321, L N T S.).

portance that a special decree was issued by the Central Executive Committee on November 21, 1924. Among other things it contained a statement to the effect that:

"A Soviet mission represents its republic, *i.e.*, the State of Workers and Peasants, where a *different régime of life prevails, determined by* a specific social and moral philosophy of the toiling masses. Therefore, it is perfectly evident that the representatives of the Union of Socialist Soviet Republics accredited to foreign governments are to conform not only in their personal but also in their official diplomatic activities to the simplicity corresponding to the spirit of the Socialist régime . . . similarly, the failure of the Soviet representative to participate in manifestations which are reactionary or generally strange [unacceptable] to the Soviet régime in no case should be construed as an act of propaganda or as a demonstration of a political character." [109]

On the other hand the Soviet Government obviously can not consider as unfriendly instances where the diplomatic agents of foreign states consider it impossible for them to participate in celebrations or meetings at which the revolutionary aims of communism are propagated, if they are contrary to the policy and customs of their own countries.

In spite of the fact that the Soviet representatives are agents of the State of Working Masses and that there is a vast difference between the political philosophy of the communist and non-communist states, and irrespective of the fact that the Soviet representatives thus must be very careful in their reactions to the ceremonial functions in the countries of their sojourn, practice has revealed that the Soviet diplomatic agents follow very closely the traditions of diplomatic international custom, which are far indeed from the ideals pursued in their home state. Although there have been severe admonitions in the press of the Soviet Union [110] to the effect that Soviet diplomatic agents abroad should remember the ideals of the government which they represent, the actual situation shows this suggestion has been little heeded by the Soviet diplomatic officials in their intercourse with their colleagues in foreign countries.

Another measure relative to the prerogatives enjoyed by diplo-

[109] *Sobr. Zak. i Rasp. S.S.S.R.*, 1924, I, pp. 402–403. For text, see Appendix VIII.

[110] *Cf.* Yaroslavsky, "Pokrepche Na Avanpostakh," *Pravda*, Mar. 7, 1928

matic agents was passed on August 29, 1924, when the Central Executive Committee and Council of Peoples' Commissaries issued a joint Decree on Flags and Pennants, Article 4 of which provides that the flag of the Union shall be displayed abroad over the buildings occupied by the Soviet representatives plenipotentiary, by the trade delegations and by the Soviet consulates in accordance with special instructions issued by the People's Commissariat for Foreign Affairs. The next article grants the right to fly these emblems also on men-of-war and merchant ships of the U.S.S.R. when the diplomatic representatives are on board.[111]

Certain aspects of ceremonial prerogatives are also treated in the above-mentioned Naval Code, known as the Statute on the Navigation of the Workers' and Peasants' Red Fleet. In respect to paying ceremonial calls, a note to Article 2148 determines the seniority of the representatives plenipotentiary and the order of procedure of different officers in command of the men-of-war, while Article 2159 refers to the salute.[112]

Mention must be made of one more aspect of diplomatic privileges, namely, freedom of passage through foreign countries when diplomatic agents are on their way to the country of their assignment. Neither in the national laws nor in the international practice of the R.S.F.S.R., nor later in those of the U S.S.R. is there any evidence that the generally recognized principles relative to these privileges are disregarded by communist authorities.

In view of the particular interest which the Soviets take in the laws on labor and labor conditions, a few words are proper about the attitude of the Soviet Government toward the application of these laws to the foreign diplomatic missions at Moscow. A diplomatic representative is free to conclude a labor contract simply to employ a Soviet national to do the necessary work either for the diplomatic mission or for some one of the personnel. By this contract the Soviet national enters the service of the foreign diplomatic mission. Nevertheless it is advisable that foreign diplomatic agents accredited to Moscow should take into consideration the peculiar status of laborers in the communist social

[111] *Sobr. Zak. i Rasp. S.S.S.R.*, 1925, I, par. 332.
[112] In Sabanin, *as cited*, p. 206.

order, and should recognize that such labor contracts are liable to be very differently interpreted by the two parties.

This leads to a different problem, namely, the status of the auxiliary personnel in regard to diplomatic privileges. In brief, in the Soviet Union, as in many other countries, these persons remain subject to the local jurisdiction with all the consequences resulting therefrom.

Extension of Privileges

On the other hand the history of international relations contains many instances where diplomatic privileges are granted to persons who are not connected with the diplomatic service of the country to which they belong. The heads of friendly foreign states, whether monarchies or republics, are the first to be mentioned in this connection. Soviet laws contain no reference to the privileges which these persons may expect to have granted them. The reception accorded the King of Afghanistan upon his recent visit to Moscow proves, however, that the international rule on this matter was applied in the Union as an unwritten law of nations. Next among the persons who enjoy certain diplomatic privileges, though not in the diplomatic service, are persons commissioned as delegates to international congresses and conferences. Here, too, Soviet practice proves that the communist authorities remain conservative in following the customs of non-communist international practice. The foreign philanthropic relief organizations which went to Russia to extend their help in the famine-stricken areas during the years of 1919–1922, received similar consideration.

The agreement concluded at Riga, on August 20, 1921, between the R.S.F.S.R. and the American Relief Administration (A.R.A.) —referred to in the text as a "non-official American voluntary philanthropic organization"—secured for the members of the A.R.A. complete immunity and protection as well as complete freedom of movement. Article 25 granted to the personnel of the A.R.A. immunity from search and arrest, the compensation for the Soviet authorities being the promise of the members of this organization to refrain from any political or commercial activities.[118] In the Agreement concluded between the R.S.F.S.R. and

[118] *Sborn. Deistv. Dogov.*, II, 1921, p. 152.

High Commissioner Nansen at Moscow on August 27, 1921, the personal immunity of Nansen himself, as well as of the staff of his organization, was guaranteed in Article 9 by general reference to "customary diplomatic privileges." In the Agreement concluded between the Soviet authorities and the German Red Cross on August 29, 1921,[114] it was said that

"in respect to their personal rights and to their personal effects, the members of the German Red Cross in the R.S.F.S.R. shall be given a status equal to that of those in the service of the German Government in Russia, and shall enjoy all the rights granted to the latter in conformity with Article 2 of the provisional agreement between Russia and Germany of May 6, 1921."[115]

Summary

To summarize what has been said about the Soviet laws on the diplomatic service and personnel, with the exception of the abolition of diplomatic ranks, of the introduction of the novel rank of "Trade Representative," and of the limitations imposed on mail and personal effects, the innovations introduced by the Soviets into this field of international law are not outstanding.

[114] *Bulleten' TsKpomgol*, I See Korovin, "Inostrannaia Filantropicheskaia Deiatel'nost' v R.S.F.S.R. i eie pravovye normy," *Sovetskoe Pravo*, 1922, pp. 108–118.

[115] *Sborn. Deistv. Dogov*, II, 1921, pp. 24–25.

Chapter VIII

CONSULAR SERVICE

The whole complex of rules on which consular service rests is composed of national laws of individual states, which regulate the functions of the consular agents, and of international rules determining the legal status of these agents in the countries of their sojourn. As in the case of diplomatic intercourse, here, too, Soviet national laws and treaties are the most important sources for the present study.

Soviet consular laws show the same division as is found in the laws dealing with diplomatic agents. On the one hand, they consist of laws regulating the legal status of foreign consuls in the Soviet Union, and on the other, of laws relative to the work of Soviet consuls abroad. The historical development of the first group of these laws is almost identical with that of the laws relative to the status of foreign diplomatic agents in the Soviet Union. In the foregoing pages were given abstracts from the Circular Instructions of the People's Commissariat for Foreign Affairs of 1922 concerning the rights and duties of foreigners, including foreign consular officers.[1] On June 30, 1921, along with the Statute on Diplomatic Agents there had been issued the Statute on Foreign Consular Officers in Soviet Russia.[2] This Statute provided a repetition of traditional rules on consular service, and deviated very little from the general provisions of international public law on the subject.

Foreign Consuls in the U.S.S.R.

Prior to the promulgation of the Union Statute of January 14, 1927, several other legislative acts were promulgated to supplement the existing regulations. Among these must be mentioned the instructions of 1921–23 concerning the official personnel of foreign consulates in the Soviet Union; the Decree of the Council

Early Soviet Laws

[1] *Supra*, p. 152
[2] *Sobr. Uzak i Rasp. R.S.F.S.R.*, 1921, pp. 397–398

of Peoples' Commissaries of August 24, 1923, by which foreign consuls were relieved from any duties in regard to the mobilization of horses; [3] the Decree of February 22, 1924, providing for similar exemption from military auto-transport duty; [4] Article 42 of the Statute on Local Finances on April 25, 1926, by which foreign consular agents were exempted from all local taxes and charges, provided that reciprocity was guaranteed; [5] the Decree of August 27, 1926, providing in Article 2 that the method of communication between the local authorities and the consular officers should be regulated by the People's Commissariat for Foreign Affairs on the basis of international treaties and of the laws of the U.S.S.R.; [6] and the Instructions on the Method of Communication with Consular Officials, issued in 1925.[7]

Statute of Jan. 14, 1927

On January 14, 1927, the Statute on Diplomatic and Consular Service was promulgated, chapter 2 of which deals with the status of foreign consuls in the U.S.S.R. In general it follows the rules well established and fully recognized in the international practice of non-communist states,[8] although it differs in minor details. Thus, the principle is introduced that the Government of the Soviet Union will accept as foreign consular officers only citizens of the countries for which they are acting (Art. 9). The other innovation, which is rather of national character, is that the acceptance of foreign consuls in the Union Republics depends on the consent of the Government of the respective Union Republics, to which degree the principle of centralization, stipulated by the Constitution for the conduct of foreign relations, is disregarded (Art. 9).

The extent to which the Soviets follow the general practice of nations in regard to consular service is seen in the recognition by the Soviet Government of the "consular corps," proof of which is found in the issuance of the so-called *cartes-consulaires*. These

[3] *Vestnik TsIK, SNK i STO*, No. 6, par. 141.
[4] *Ibid*, No. 3, par. 62.
[5] *Sobr. Zak. i Rasp. S.S.S.R*, 1926, I, pp. 574–575.
[6] *Ibid*, 1926, I, pp. 1018–1019.
[7] Egor'ev and others, *as cited*, pp. 230 and 236. *Cf.* also the Circular of the People's Commissariat for Foreign Affairs, of Mar. 31, 1924, No. 3513/IV (*ibid.*, p 238)
[8] *Sobr. Zak. i Rasp. S.S.S.R.*, 1927, I, pp 70–71. A full translation of the text of this Statute is given in Feller and Hudson, *Diplomatic and Consular Laws and Regulations*, 1933, pp 1212ff.

cartes-consulaires may be issued by the People's Commissariat for Foreign Affairs in Moscow, and, in cities where the latter is represented, by its duly authorized agents. Where no such agents exist, they are issued by the local Executive Committees.

Soviet Consuls abroad

In comparison with the Soviet laws on foreign consuls in the U.S.S.R., the laws dealing with the organization of the Soviet consuls abroad are both more numerous and more extensive. The first Soviet law on this subject is a Decree of the Council of Peoples' Commissaries of October 18, 1918, concerning the organization of the consular service.[9] Abrogating in its twelfth article the old Imperial Code on Consular Service of 1858, it provided for the establishment of Soviet consular agencies in foreign countries; in countries where for one reason or another, no such offices could be established, the Workers' and Peasants' Government could appoint some one of the local citizens, with his consent, to carry on the consular duties on behalf of the Soviets. Furthermore, this decree contained an enumeration of consular duties, which on the whole did not differ from the general duties of the consular officers of other countries.

National Laws

Although at present of only historic interest, this Decree of 1918 remains important in that it contained two ideas which later developed into a fixed rule of the Soviet practice. The first was that of combining the diplomatic and consular services into a single Foreign Service, as distinct from the old practice which had existed under the Empire. The other was that of uniting diplomatic and consular functions in a given country in a single person. As a result the Soviet diplomatic missions include consular departments. There was no direct reference to this consular department of the Soviet Diplomatic Missions in later Soviet laws until the Statute of 1926.[10]

The next act relative to consular service was the Instructions for Soviet Consuls of April 6, 1921, which consisted of nine articles dealing with general problems connected with the status and the duties of consular offices.[11] Shortly thereafter, on May 26, 1921, the Council of Peoples' Commissaries promulgated the Statute

[9] *Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1917–18, pp 964–966.

[10] Sabanin, *as cited*, p. 235 In the Statute of 1926, Art. 12 deals with the administration of these departments. *Infra*, p 211.

[11] Egor'ev and others, *as cited*, pp 146–150.

on Soviet Organs Abroad.[12] This Statute, in distinction to the Decree of 1918, eliminated from the list of consular duties those of a purely economic nature, which were transferred to the Trade Representations. Furthermore, the provisions relative to judicial functions, included in the earlier decree in the form of a general statement that such functions could be accorded to consuls by treaty provisions, found no place here.

Upon the formation of the Union in 1923, the extension of international intercourse with other countries forced the Government of the Soviet Union to reform its laws on consular service. Very few of all the decrees and departmental instructions of the R.S.F.S.R. retained any practical value.[13] The first new law dealing with the subject after the formation of the Union was the Statute on the People's Commissariat for Foreign Affairs of November 12, 1923. Among other things, it referred to the consular service of the Soviet Union, and stated that the consuls-general, consuls, vice-consuls and consular agents should receive their consular patents from the People's Commissariat for Foreign Affairs.[14] By special instructions issued by the People's Commissariat for Foreign Affairs, on August 29, 1924, the consulates had the right of displaying the flag of the U.S.S.R.[15] The duties of the consuls were outlined in a series of special laws, such as the Decree of June 5, 1925, concerning entry into and departure

[12] *Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1921, pp. 353–355. For other laws on the subject, see the Decree of September 22, 1921 concerning the manning of Soviet vessels, which, among other things, set forth the duty of the captain to be guided by the Instructions to Consular Officers in accordance with the Consular Code (*Sobr Uzak i Rasp. R.S.F.S.R.*, 1921, pp. 630–633), and the Decree of March 2, 1922 establishing the tariff of consular charges (*ibid.*, 1922, I, pp. 361–363), to which on Oct. 24, 1922 was added a supplementary decree establishing an additional charge of ten per cent on all consular fees for the Russian Red Cross (*ibid.*, 1922, I, p. 1075); also the Instructions of the Commissariat for Foreign Affairs of July 11, 1923 on the functions of Soviet consuls in regard to Soviet merchant vessels and Soviet men-of-war (Egor'ev and others, *as cited*, pp. 228ff.) (*Cf.* Div. VI of the Consular Law of Jan. 8, 1921.) In general it may be said that the number of these Instructions was entirely out of proportion to the actual legal value of their contents.

[13] Thus of the Decree of Oct. 19, 1918 only arts. 11 and 12 remained operative, and they only for the time being. According to the former, the People's Commissariat for Foreign Affairs had the right to issue instructions determining the functions of the Soviet Consular agents, while Article 12 abrogated the old Imperial Consular Code of Dec. 23, 1858. Of the others only the Instructions of the People's Commissariat for Foreign Affairs of Apr. 6, 1921, issued in conformity with the above Article 11 of the Decree of 1918, retained its legal validity.

[14] *Vestnik TsIK, SNK i STO*, 1923, No. 10, p. 300.

[15] *Sobr. Zak. i Rasp. S.S.S.R.*, 1925, II, pp. 331–337.

from the U.S.S.R.,[16] and the Decree of September 5, 1924, concerning vessels flying the flag of the U.S.S.R.[17]

The number of Departmental Circulars and Instructions continued to grow, with the result that towards the middle of 1925 the Soviet consular agencies became more and more insistent in their requests that rules on the status and the functions of Soviet consular officers should be embodied not in fragmentary instructions, but in a systematic written code.[18] To meet these demands, the Soviet Government proceeded to combine the laws and regulations which had been accumulating during the years 1921–1925 into a single document. This task was accomplished with the promulgation by the Council of Peoples' Commissaries on October 27, 1925, of a new Statute on the Consular Service of the U.S.S.R, which came into force in January, 1926. It is commonly known as the Statute of 1926, and at present constitutes the main Soviet law on consular service.[19]

The legislation of the Union, international custom and treaties are referred to directly in Article 2 of this Statute as the most important legal bases upon which the performance of consular functions must rest:

"The consular agencies of the Union of Socialist Soviet Republics in their work are to be guided by this Statute, by the laws and orders of the Government of the U.S.S R. and of the Governments of the Union Republics, as well as by treaties and agreements concluded between the Union of Socialist Soviet Republics and foreign states, and by international custom." [20]

[16] *Sobr. Zak. i Rasp. S.S.S.R.*, 1925, I, pp 589–593

[17] *Ibid*, 1924, I, pp. 148–155 *Cf* also Decree of October 24, 1919 Of the other Decrees, see Decree of May 20, 1921 (*Sobr. Uzak. i Rasp R.S.F.S.R*, 1921, p. 530); Decree of Aug. 8, 1924 on sale or lease of vessels flying the flag of the R.S.F.S.R. (*ibid.*, 1924, I, pp 333–334); Decree of Mar. 10, 1925 concerning the sanitary protection of the seacoast of the U S S.R (*Sobr Zak. i Rasp S S.S.R*, 1925, I, pp 54–56), Decree of Oct. 29, 1924 on Union citizenship (*ibid*, 1924, I, pp. 364–366); and Decree of Sept. 18, 1925 on compulsory military service (*ibid*, 1925, I, pp. 850–882).

[18] Durdenevskii, "Konsul'skii Ustav Soiuza Sovetskikh Sotsialisticheskikh Respublik," *Sovetskoe Pravo*, 1926, No. 3 (21), p 106

[19] *Sobr. Zak. i Rasp S.S.S.R*, 1926, I, pp 100–122. Since 1926 this Statute has been modified by a number of supplementary decrees. Thus by the Decree of the Central Executive Committee of Jan 4, 1928, a supplement to Article 45 was introduced relative to the duties of the consuls in cases of adoption of children (*Sobr. Zak. i Rasp. S S S.R*, 1928, I, pp. 118–120). *Cf* also Decree of Sept. 4, 1929 (*ibid.*, 1929, I, pp 1130–1131), and Decree of Sept 18, 1929 (*ibid*, 1929, II, pp. 767–774).

[20] *Sobr Zak i Rasp. S S S.R.*, 1926, I, p 100

International Agreements

The proof of the practical application of this provision as regards international treaties is to be found in the fact that in addition to its national legislation, the Soviet Union has concluded three consular conventions in the technical sense of the term. They are: The Consular Convention with Poland of July 18, 1924; [21] the treaty with Germany on Consular Service of October 12, 1925; [22] and the exchange of Notes with Sweden of February 2, 1927.[23] The main principles relative to the consular service incorporated in these Agreements will be referred to in Chapter IX on treaties.

Consular Officers

The problems connected with the consular service have been given very little attention in international law as compared with those relative to diplomatic intercourse, with the result that although comprising one of the most intricate branches of public international law they are among the least explored. Preliminary to the problems regarding consular service are those of the person and of the rank of consuls, which, although an international problem, is determined by national law. There is no definite rule as to the national allegiance of consuls to be found in international law; the states are left at liberty to decide this problem for themselves. Both the Soviet national legislation and the international

Person

[21] *Sborn. Deistv. Dogov.*, II, 1925, pp. 38ff; XLIX, 201, L.N.T.S.

[22] *Ibid.*, III, 1927, pp. 19ff.; LIII, 163, L.N.T.S.

[23] *Ibid*, IV, 1928, pp. 35ff. References to the consular service are found also in several treaties of commerce concluded between the Soviet Government and non-communist states. To these belong the Treaty with Afghanistan of Feb. 28, 1921, Art. 3 of which provides for a series of mutual consular privileges, while Art. 5 outlines the organization of consular service in both contracting states (*ibid.*, I, 1924, pp. 40ff); the Treaty with Persia of Feb. 26, 1921, Art. 23 of which enumerates the consular offices to be opened in both countries (*ibid*, II, 1921, p. 41; IX, 384, L.N.T.S.). The same provision is found in Arts. 4 and 5 of the Treaty with Mongolia of Nov. 5, 1921 (*ibid*, II, 1922, pp. 28ff), and in the Notes exchanged with Finland on Jan. 2–4, 1923 (*ibid.*, III, 1927, pp. 61ff). The Treaties of Peace between the R.S.F.S.R. and Latvia of Aug. 11, 1921 (Art. 17), Lithuania of July 12, 1920 (Art. 13), and Estonia of Feb. 2, 1920 (Art. 16), determine the rights of consuls in matters involving succession and inheritance (*ibid.*, I, 1924, pp. 84, 104 and 204, respectively; II, 196, L.N.T.S., III, 106, L.N.T.S., and XI, 30, L.N.T.S., respectively). The same provisions are found also in the Treaties of the Ukrainian S.S.R. with Latvia of Aug. 3, 1921 (Art. 10), and with Lithuania of Feb. 14, 1921 (Art. 7) (*ibid*, I, 1924, pp. 93 and 109). Finally, provisions relative to the consular service, and in particular to the mutual granting of the privileges connected with the most-favored-nation clause, are found in Arts. 1 and 33 of the Treaty of Commerce with Norway of Dec. 15, 1925 (*ibid*, III, 1927, pp. 11ff; XLVII, 10, L.N.T.S.), and in Arts. 4 and 9 of similar treaties with Latvia of June 2, 1927, and with Estonia of May 17, 1929, respectively (*ibid.*, IV, 1928, pp. 61ff., and VI, 1921, pp. 69ff.; XLVIII, 21, L.N.T.S., and XCIV, 323, L.N.T.S. respectively).

agreements which the Soviet Government has entered into, require that consuls be citizens of the country for which they act, this being equally applicable to foreign consuls in the U.S.S.R. and to Soviet consuls abroad. Article 10 of the Statute on Consular Service of 1926 reads:

"Only citizens of the U.S.S.R. may be appointed consuls or consular agents." [24]

The consular conventions already referred to [25] also emphasize this attitude of the Soviets towards the nationality of the consuls. In the Convention with Poland it is said that consuls should be citizens of the country in whose behalf they act, and that they cannot engage in trade or business in the country of their sojourn.[26] In the notes exchanged with Sweden in 1927 it is clearly stated that consuls must be appointed as government officials who receive their salary from the state, and that they have no right to engage in any trade or business in the territory of their sojourn. The same idea, but without mention of the source of their compensation, is contained in Articles 4 and 9 of the Treaties of Commerce with Latvia and Estonia, respectively.[27]

In view of the liberal attitude which the Soviet authorities have taken towards the rights of women in general, as well as their right to engage in diplomatic service, there is no reason for surprise that the Soviet consular law makes no distinction between the sexes in the appointment of Soviet consular officers. The same is to be said in regard to the religion of consular agents.

Rank

Usually states differentiate their classified consular service into consuls-general, consuls, vice-consuls and consular agents—officers *de carrière*. Proof that the Soviets accept this division and apply these ranks to their consular agents is to be found in the provision of Article 1 of the Statute of 1926:

"The consular agencies of the Union of Socialist Soviet Republics are: consulates-general, consular departments of the representations plenipotentiary, consulates, vice-consulates and consular agencies." [28]

[24] *Sobr Zak. i Rasp. S.S.S.R.*, 1926, I, pp. 100ff. A full translation of the Statute of 1926 is given in Feller and Hudson, *as cited*, pp 1197ff.
[25] *Supra*, p. 212.
[26] Art. 1
[27] *Sborn. Deistv. Dogov*, IV, 1928, p. 61 and *ibid.*, VI, 1931, p. 70, respectively
[28] *Sobr. Zak. i Rasp S.S.S.R.*, 1926, I, pp 100ff

Opposed to the consular officers *de carrière*, who are on the civil service list of their government, are *consuls honoraires*, who need not be nationals of the country whose interests they are protecting, and who ordinarily work without compensation. The Soviet Régime emphasizes the political character of consuls, and therefore does not resort to the services of *consuls honoraires*.

It is true that the Decree of 1918 allowed Soviet consuls-general abroad to employ the services of local citizens as *consuls honoraires*. The Instructions of 1921, however, left this matter untouched, dividing consular officers *de carrière* into the same ranks recognized by non-communist countries. Neither is any mention found of *consuls honoraires* in the Statute of 1926:

"Article 9. Consuls, consular agents, secretaries and other officials of consulates and consular institutions are in the public service of the U.S.S.R. under the People's Commissariat for Foreign Affairs.

"They are strictly forbidden to take direct or indirect part in private institutions or enterprises.

"Article 10. Only citizens of the U.S S.R. may be appointed consuls or consular agents.

"Article 11. The People's Commissariat for Foreign Affairs has the exclusive power to appoint consuls and consular agents, to transfer them, to grant leave of absence and also to discharge them from office.

"Article 12. Consuls (with the exception of heads of consular departments of plenipotentiary representations) and consular agents when appointed, receive their appropriate credentials and consular patents, in which their consular districts are indicated, from the People's Commissariat for Foreign Affairs.

"Consuls and consular agents shall enter into active service as soon as they receive consent (Exequatur) from the government of the country to which they are appointed as consuls or consular agents.

"The heads of the consular departments of plenipotentiary representations shall assume their consular duties after official notification of their appointment has been given to the appropriate government by the plenipotentiary representation." [29]

The consular conventions just mentioned support this opposition of the Soviets to the institution of *consuls honoraires*.

Personnel of the Consulate

As to the personnel of the consulates, the Soviet Statute on Consular Service of 1926 in Article 13 provides that during the

[29] *Sobr. Zak. i Rasp. S.S.S.R.*, 1926, I, pp. 100ff.

illness or absence of the consul, the vice-consul, is to take charge of the office, or where there is no vice-consul, the secretary of the consulate. Articles 14–16 mention the functions of the secretaries in the Soviet consulates, emphasizing in particular the fact that their appointment and recall is to be effected by order of the People's Commissariat for Foreign Affairs.

The problem of personnel has also been touched upon in consular conventions. Thus Article 1 of the Convention with Poland provides that the consular secretaries and consular attachés must also be citizens of the country by which they are appointed. Article 3 provides that the number of persons to be included in the personnel of the consulates shall be established by separate agreements for each agency. In the Consular Treaty with Germany, Article 3 outlines the ranking order of the consular officers in case of the illness or absence of the head of the consulate.

Organization of Soviet Consular Service

The problems connected with the consular service in the narrow sense of the term may be divided into three main groups: Those relative to the organization of the consular service; consular duties and functions; and, consular privileges. Of the problems of the first group the first to be considered is that of the authority vested with the right of appointment of consuls and consular officers, and of the authority having the right to receive them.

Appointment and Reception

The Soviet consuls are appointed by the People's Commissariat for Foreign Affairs and receive from it their passports—consular patents. They assume their duties at the moment of receiving their exequaturs from the government of the receiving state.[30] As to the Soviet authority to receive foreign consuls, Article 9 of the Statute of January 14, 1927, states that foreign consuls are accredited to the People's Commissariat for Foreign Affairs of the U.S.S.R.

Until recent times, international rules concerning consular service did not require any preliminary *agrément*, such as is customary in the diplomatic service. More recently, however, there has been a tendency to request this preliminary *agrément* from the receiving state in the field of consular service as well. To

[30] Arts. 11 and 12 of the Statute on Consular Service of the U S.S R of 1926, respectively.

conform with the confederated structure of the Soviet Union, a Note to Article 9 of the Statute of 1927 provides that foreign consuls are received in the Soviet Union only with the consent of the Union Republics in which they are to reside. Article 10 of the same Statute furthermore provides that foreign consuls arriving in the Soviet Union must present to the People's Commissariat for Foreign Affairs their patents and receive in return the exequatur, in which mention must be made of the district within which the arriving foreign consul is to exercise his functions. References to patents and exequaturs are made also in the consular conventions which the Soviet Union has entered into.[31]

rmination Office

Problems concerning the termination of consular activities have received no uniform solution in international law. The consular conventions of the U.S.S.R. reflect this irregularity. Thus, while Article 2 of the Convention with Germany requires an enumeration of the reasons for the termination of consular functions, the corresponding article of the Convention with Poland does not require any explanation. The international practice of the U.S.S.R. furthermore shows that the suspension of diplomatic relations does not always call for the immediate severance of consular relations. Thus, in the spring of 1927, the Soviet Government severed diplomatic relations with China, but continued to maintain its consul-general in Peking, as well as a number of consular agencies in other cities of China. It was not until July, 1929 that the Soviet consular agencies ceased to function in China.

A declaration of war is naturally considered by the Soviet authorities as a ground for the withdrawal of its consuls in the enemy countries. The Code of 1926 in its last two articles (137, 138) gives to the Soviet consuls detailed directions how to act in case war should be declared between the U.S.S.R. and the country in which they reside. An analysis of these instructions,

[31] See the Consular Conventions with Poland and Germany, and the Notes exchanged with Sweden (*supra*, p. 212). *Cf.* also Art. 4 of the Treaty of Commerce with Latvia of 1927 (XLVIII, 321, L.N.T.S.); Art. 9 of a similar Treaty with Estonia of 1929 (XCIV, 323, L.N.T.S.); Art. 1 of the Treaty of Commerce with Norway of 1925 (XLVII, 10, L.N.T.S.) Art. 5 of the Treaty with Afghanistan of 1921, and Arts. 4 and 5 of that with Mongolia of 1921 list the cities where consulates shall be established

however, does not show any deviation from the generally adopted international practice. To guard against the forcible keeping of foreign consuls in custody, Article 8 of the Consular Convention between the U.S.S.R. and Germany provides that in case diplomatic relations between these countries are severed the consuls as well as all official personnel and their families shall be granted free departure from the country of their sojourn, within a period not to exceed six days.

Another problem to be analyzed is that as to the organization of the consular service in the strict sense of the term including the designation of consular districts over which the authority of the consul is to extend; the relation between the consul and the home government or the diplomatic representatives of that government abroad; the mutual relations of the consuls among themselves; and the relations of the consuls with the local authorities of the country of their sojourns. The places of residence of the consuls and the districts to which their authority shall extend are determined, according to Soviet law, by the People's Commissariat for Foreign Affairs.[32] Mention of consular districts is found also in the Consular Conventions with Poland and Germany. Here, however, the determination is limited to provision that the places of residence and the consular districts ". . . shall be decided in each case by agreement between the two Parties," and that ". . . No change may be made in regard to the consular district specified in the exequatur, except by agreement between the Contracting Parties." [33]

Relations with Home Government

Since the relations between the consuls and their home government, or the diplomatic representatives of that government abroad, and of the consuls among themselves are governed primarily by the national laws of the countries for which they act, only the laws relating to Soviet consuls will be considered in the present study. Article 17 of the Statute on Consular Service of 1926 provides that the Soviet consuls are subordinated to the People's Commissariat for Foreign Affairs and are to perform

[32] Art. 4 of the Statute on Consular Service of 1926.

[33] Arts 2 and 4 of the Consular Convention with Poland of July 18, 1924 (*Sborn. Deistv. Dogov.*, III, 1927, pp 38-39; XLIX, 201, L.N.T.S.). *Cf.* Art 1 of the Consular Treaty with Germany of Oct 12, 1925 (*ibid.*, pp. 19-20; LIII, 163, L.N.T.S.).

their consular duties under the immediate direction of the respective Representative Plenipotentiary.[34] Although this article contains no express provision how Soviet consuls should communicate with their home government, whether directly with the People's Commissariat for Foreign Affairs, or through the offices of the Soviet Diplomatic Mission, its language, according to Professor Sabanin, must be interpreted to mean that Soviet consular officers "within the province of their functions, and in the interest of more rapid and undelayed expedition of business, *may and must communicate with the Department of Foreign Affairs*, sending to the latter all current information and receiving from them, *likewise directly*, all necessary instructions." [35] Much more definite is the provision of Article 21 of this Statute which expressly stipulates that

"The Consuls communicate directly with the People's Commissariat for Foreign Affairs on all matters of an economic or international-legal character, as well as on matters relative to administration or notarial functions, and on matters calling for instructions from the People's Commissariat for Foreign Affairs." [36]

Clause "c" of this Article provides, however, that the consuls must send copies of their communications to the People's Commissariat for Foreign Affairs to the respective Soviet Diplomatic Representative. An exception to the general rule exists as to consular agents. Although ultimately responsible to the People's Commissariat for Foreign Affairs they are immediately subordinate to the consuls to whose districts they are assigned.[37] Another exception is found in the Note to Article 17 of the Statute of 1926, according to which the People's Commissariat for Foreign Affairs may designate one of the Soviet consuls in dominions, protectorates, colonies, and other dependent territories of a receiving state to be in charge of the whole consular service to the given territory, he being ultimately responsible to the People's

[34] *Sobr. Zak. i Rasp. S.S.S.R.*, 1926, I, p. 102.
[35] Sabanin, *as cited*, p. 277. (Italics by author.)
[36] *Sobr. Zak i Rasp. S.S.S.R*, 1926, I, p. 103.
[37] Art. 22 (*Sobr. Zak. i Rasp. S.S.S.R*, 1926, I. p. 103). In exceptional cases, and upon special instructions of the People's Commissariat for Foreign Affairs, consular agents may be designated to be subordinate directly to the Representative Plenipotentiary (cl 2, art. 17 of the Statute of 1926) (*ibid.*, p. 102).

Commissariat for Foreign Affairs. The relation of the consuls among themselves may be governed by one of two systems. Each consul in a given foreign country may be independent of every other, being responsible individually and directly to the diplomatic representative and through him to the home Foreign Office; or, consulates-general may be established in the foreign country to which all consuls are subordinate. In Soviet law the first system prevails.

Relations with Authorities of Countries of Sojourn

More complicated is the situation in regard to the communication of the consuls with the authorities of the country of their sojourn. Here, too, the rules outlining the rights of the consuls to communicate with the local authorities are primarily a concern of the national legislation of the country for which the consul acts. Were this strictly true in practice, only the rights of Soviet consuls abroad would require analysis. Since, however, the receiving country may play a considerable part in controlling the rights of foreign consuls in this respect by merely limiting the rights of its own organs to communicate with the foreign consuls, this problem must be considered from two aspects: the position of foreign consuls in the U.S.S.R., and the position of Soviet consuls abroad.

The Soviets did not fail to take advantage of the legal situation just mentioned. It is true that in the Soviet statutory law there is no provision dealing specifically with the problem of the ways in which foreign consuls are to communicate with the Soviet authorities in the Union. The joint decree of the Central Executive Committee and the Council of Peoples' Commissaries of August 27, 1926, touches upon the matter only in very general terms:

"The method of communication of the state organs and officials of the Union of S.S.R. and of the Union Republics with the foreign consular agencies in the U.S.S R. is to be determined by the People's Commissariat for Foreign Affairs in conformity with the treaties in force and with the laws of the U.S.S.R., and in case of need, by agreement with the respective Union republic." [38]

[38] Note to Art. 2 of the Decree on the "Method of Communication of the Government Organs and Officials of the Union of S.S R and Union Republics with the Government Organs and Officials of Foreign States" (*Sobr Zak. i Rasp S.S.S.R.*, 1926, I, p 1018)

Different from this, however, are the Instructions of the People's Commissariat for Foreign Affairs of August 9, 1925. Although not strictly a statute, and although preceding the above quoted decree of 1926, these Instructions must be considered as the guiding rules regulating the intercourse between foreign consuls and the Soviet authorities. Article 3 of these Instructions provides:

"3. The right of communication with foreign consuls residing within the U.S.S.R. is accorded to the following highest local authorities: (1) representatives and agents of the People's Commissariat for Foreign Affairs, (2) presidia of the district [gubernskii] and regional [oblastnoi] executive committees, (3) chiefs of administrative sections of these committees, (4) district procurors and the heads of local representations of the People's Commissariat for Foreign Trade." [39]

In practice, according to Sabanin, this rule is understood to mean that if in a given locality there is an agent of the People's Commissariat for Foreign Affairs, foreign consuls conduct their communications with Soviet authorities through these agents.[40] Note 1 to this article furthermore provides:

"Note 1. Other local authorities, in particular organs of the O.G.P.U. and military [authorities], may communicate with consuls only through the Administrative Department of the Provincial Executive Committee.

"Communication with local [Soviet] authorities in other consular districts, as well as with the central government institutions of the Union of S.S.R. is to be effected through diplomatic channels." [41]

In referring in its first clause to the right of the Soviet authorities to communicate with foreign consuls, this Note leaves open the question of the right of foreign consuls to initiate communication with those authorities. It is only by comparing the wording of the first part of this Note with the language of Article 3 and the interpretation given by Sabanin that an assumption may be made that in case of the lack of diplomatic agencies in a given consular district, foreign consuls may initiate communication with the local Soviet administrative authorities. The wording

[39] Egor'ev and others, *as cited*, pp. 230ff.
[40] Sabanin, *as cited*, p. 281.
[41] Egor'ev and others, *as cited*, p. 231.

of the last part of the note is clear. As regards the communication of foreign consuls with autonomous Soviet Republics,[42] Note 2 to Art. 3 reads:

"With the autonomous republics consular agents [agencies] communicate through the N.K.V.D. [People's Commissariat of the Interior] of these republics."

The fact that this provision follows immediately that allowing foreign consuls to communicate with local Soviet authorities "in other consular districts . . . through diplomatic channels," leads to the conclusion that a distinction should be made between the local authorities of the Union and those of the Union Republics, although there is no reference to that effect in the materials available.

To complete the analysis of the Soviet national law on the matter, Article 6 of these Instructions remains to be quoted:

"Limitations imposed in Art. 3 upon the right of local authorities to communicate with consuls is effective only in matters bearing directly upon the execution by a consul of his consular function, *i.e.*, [protection of] interests of the nationals of the state which he represents, in so far as these interests lie within his consular district. In all other matters and cases connected directly with normal functioning of the consular offices, or with the life of a consul, as a foreigner [residing] in the territory of the Union, the consul has the right of communication with other local Soviet authorities (post offices, telegraph agencies, banks, information bureaux, etc)" [43]

The treaty practice of the Soviets is fully in accord with the above provisions. Article 11 of the Consular Convention with Poland provides:

"Consuls shall be entitled to defend the rights and interests of nationals of the country which has appointed them.

"For this purpose consuls shall be authorized in the performance of their duties, provided that they comply with the regulations in force in the territories of the Contracting Party in question, to approach the competent authorities with a view to obtaining information of any description, or to protesting against any infringement of the

[42] Evidently "autonomous republics" here refers to the component members of the Union Republics.

[43] Egor'ev and others, *as cited*, p. 231.

rights or interests of the nationals of the country which they represent, or against any abuse of which the said nationals may desire to complain.

"Consuls may not communicate directly with the Ministry (People's Commissariat) of Foreign Affairs of their country of residence or with local authorities whose offices are situated outside their consular districts." [44]

Communication between the Soviet consuls and the authorities of the country of their sojourn is regulated differently from that of the diplomatic agents. While the latter communicate with both the central and local authorities through the Minister of Foreign Affairs of the country of their sojourn, the right of the consuls in this respect is very different. Their communications with the central state authorities may be conveyed only through the respective Soviet Representative Plenipotentiary, but they are permitted to deal directly or through brother consuls with the local authorities. Article 23 of the Statute of Consular Service of 1926 reads:

"Consuls in all ordinary matters concerning their consular districts communicate directly with state and civic organizations of their district.

"Communications with the authorities of the country of their sojourn in other consular districts is effected through the respective consuls of the Union of Socialist Soviet Republics in that district.

"Communications of the consuls with the central state authorities of the country of their sojourn is effected through the representative plenipotentiary." [45]

To conclude the analysis of the problems concerning the organization of the consular service, brief mention is proper of the accumulation of consular offices, *i.e.*, the service of one consul for several countries and, *vice versa*, the assignment of one consul to several posts, and the combination of diplomatic and consular functions in one office. Consular practice knows instances where honorary consuls of one country have undertaken to perform consular functions for several other countries at the same time. As to the consuls *de carrière*, such instances are much more rare. Soviet law does not exclude such a practical possibility, but allows

[44] *Sborn. Deist. Dogov.*, III, 1926, pp. 41–42; XLIX, 201, L.N.T.S. *Cf.* Art. 16 of the Consular Treaty with Germany of Oct. 12, 1925 (*Ibid*, III, 1927, p. 23; LIII, 163, L.N.T.S.).

[45] *Sobr. Zak. i Rasp. S.S.S.R.*, 1926, I, p. 103.

it only in extraordinary instances. Article 19 of the Statute of 1926 reads:

"Consuls or consular agents of the Union of Socialist Soviet Republics, besides their direct consular functions, are allowed to assume consular functions of other governments only in extraordinary cases, and only by a special decree of the People's Commissariat for Foreign Affairs in each case." [46]

As to the reverse form of accumulation of consular duties, namely, the appointment of one single consul to several countries, it may be said that consular practice knows still fewer instances of this kind.

Both Soviet law and practice recognize the possibility of combining consular and diplomatic functions in one person. Article 18 of the Statute on Consular Service of 1926 provides that in countries where there is no Soviet diplomatic representative the Soviet consuls may be commissioned to perform diplomatic functions. An implication to the same effect is contained in Article 16 of the Consular Treaty with Germany.[47] On the other hand, Soviet law provides that in every Soviet diplomatic mission there is to be what is termed a "consular department," the head of which has the rank of consul.[48] Consular conventions corroborate this provision of Soviet national law. Thus, Article 25 of the Convention with Poland stipulated that all provisions of this convention relative to consular functions were to be applied also to diplomatic agencies in so far as they performed consular duties. Article 30 of the Treaty with Germany reiterates the statement found in every German consular convention, that diplomatic agents charged with the performance of consular functions shall enjoy all consular rights and privileges without any restrictions of their diplomatic rights and privileges.

Functions and Duties

Consular functions are determined by the laws of the country for which the consul acts. However, in performing their functions, consuls, like diplomatic agents, must also take into consideration the laws of the country of their sojourn. Since there is always the

[46] *Sobr Zak. i Rasp. S.S.S.R.*, 1926, I, p. 103.

[47] *Supra*, p. 212 The provisions of this article permit consular agents, in the absence of diplomatic representatives, to communicate directly with the Department of Foreign Affairs of the country in which they reside

[48] Arts 3 and 5 of the Statute on Consular Service of 1926

possibility that the laws of the two countries may differ, the receiving state recognizes the legality of the acts of foreign consuls only in so far as they do not conflict with its own laws. Most governments accord full consular powers only to their consuls *de carrière*. Since Soviet law does not recognize honorary consuls, there is no problem in this connection. The only limitation which the Soviet Statute on Consular Service imposes is that consular agents have no right to order Soviet citizens to return to the Soviet Union (*jus revocandi*), which right is reserved to the consuls.[49]

The problems connected with the consular functions have always been considered as one of the most intricate branches of public international law. By introducing the principle that trade commissioners should be considered equal with the officers of the diplomatic service, the Soviet Régime has added further complexity to these problems. In general the functions of the Soviet consular officers abroad may be divided into the following groups: the general protection of the interests of the Soviet Union, protection of Soviet nationals abroad, and functions relative to the Soviet military and commercial air service. During the first years of the Soviet administration the services of Soviet consuls abroad were but little in demand. The result was that there arose a strong movement for the abolition of the expensive consular service whose functions were purely economic, and for the substitution of trade agencies. The law of 1918 and those of 1921 introduced nothing new to help the situation. They merely stated that the consuls of the R.S.F.S.R. should support the economic and legal interests of their country as well as of their countrymen. Later, however, this vagueness was replaced by a more or less definite outline of consular functions. The Soviet consuls abroad, besides being agents for foreign trade, became also political agents. In fact, it may be said that in time the Soviet consul became what may be called a "deputy representative plenipotentiary" in a given district.

Protection of Interests of State

The most important articles of the Statute of 1926 on Consular Service in regard to the general protection of interests of the Soviet Union are Articles 1, 28, 40 and 41.[50] The first repeats

[49] Art. 41.
[50] *Sobr. Zak. i Rasp. S.S.S.R.*, 1926, I, pp. 100, 104 and 106, respectively.

the provisions of the laws of 1918 and 1921, stating that the protection of the economic and legal interests of the U.S.S.R. and of Soviet juridical persons and citizens are the main functions of the Soviet consular service. Article 28 enumerates the subjects of the consular reports, mentioning first of all information about the political conditions in a given consular district. The most interesting of these four articles, however, are Articles 40 and 41. The former instructs the consuls to take necessary measures to look to it that Soviet citizens abroad both in their private and official capacities should obey their orders:

"The consul must see to it that the citizens of the Union of Soviet Socialist Republics who are abroad either in a private capacity or in the performance of their duties for Soviet state organs, institutions or organizations, as enumerated in Article 39, *carry out all his legitimate orders.* In case of insubordination to such orders of the consul, the latter is to notify the People's Commissariat for Foreign Affairs in order *that the necessary measures may be taken.*" [81]

Article 41 reads:

"In case of extreme necessity a consul has the power, with the consent of the plenipotentiary representative, to order the citizen of the U.S.S.R. to return to the territory of the U.S.S.R. before the expiration of his legal sojourn abroad. In case of non-acceptance of this, the consul has the right, through the People's Commissariat for Foreign Affairs, to raise the question of the forfeiture of civil rights of the above-mentioned person before the Government of the U.S.S.R. The reports on this matter must be sent by the consul through the plenipotentiary representative of the U.S.S.R. residing in that country.

"Note: In the localities indicated in the Note to Article 17, the consul, in matters named in Article 41, may communicate directly with the People's Commissariat for Foreign Affairs." [82]

The fact that the provision of Article 40 refers to citizens of the U.S.S.R. who may be abroad "in a private capacity," coupled with the expression "legal sojourn abroad," found in Article 41, which likewise covers private sojourn outside Soviet territory,

[81] Art 39 says that consuls shall extend their assistance to all Soviet officials who are found in their consular districts in the performance of their duties for the Soviet state organs or institutions, or for cooperative and civic organizations of the U.S.S.R. or of the Union Republics. (Italics by author)

[82] *Sobr. Zak. i Rasp S.S.S.R.*, 1926, I, p. 106.

leads to the conclusion that, when applied in practice, the provisions of these two articles require that Soviet citizens follow any political advice which the consuls may deem necessary to convey. This indication of the political rôle of the Soviet consuls abroad warrants a further conclusion: the general report on political conditions, required of Soviet consuls, includes also information which has a peculiar interest for the Soviets, such as that regarding the development of socialistic or revolutionary movements, or any information which may serve the realization of the ultimate political aims of the Communist Government of the Soviet Union.

In this connection it is interesting to note that although the Statute of 1926 provides that consular duties include the protection of the economic and legal interests of the Soviet Union, the consular conventions entered into by the Union mention only the economic and legal interests of Soviet citizens and not those of the Soviet State. The explanation evidently is that such functions, when performed in the interests of the state, become purely political, and as such are not germane to other consular functions, which by most countries are understood as applying to interests of citizens primarily.

The political nature of the Soviet consul abroad is apparent also in functions which are primarily economic. The economic interests of all states may be justly considered a determining factor in shaping their political programs, but the peculiar importance which the economic aspects have in the communist program of social reconstruction have lead the Soviet Government to extend the functions of its consuls abroad. To quote Professor Sabanin:

"The result of the Soviet structure is that among the political functions of the Soviet consuls, of great importance is the problem of the coöperation of consuls with the representatives of all kinds of trading and industrial organizations of the Union, which in the performance of their duties may come to one or another consular district. Acting in this respect in conformity with articles 39 and 40 of the Statute on Consular Service, the Soviet consuls are to a certain degree *political advisers of all these persons.*" [88]

[88] Sabanin, *as cited*, p. 288. (Italics by author.)

Protection of Private Interests

The functions of Soviet consuls relative to the protection of Soviet citizens include keeping a record or list of such citizens residing in, arriving at, or departing from their consular districts; the protection of their interests both political and economic; the insurance of just treatment for Soviet citizens in local courts as well as in matters involving their labor; the provision of financial assistance in case of need; the issue of passports; the examination of applications filed by foreigners for Soviet citizenship; marrying Soviet citizens; registration of changes in families; furnishing the services of a notary public, and the settlement of problems arising in connection with inheritance. In the main these duties do not differ from those performed by non-communist consuls. Those relative to labor and marriage, however, present certain differentiations from the general practice.[54]

The Soviet consul, as the agent of a State of Working Masses, is instructed to see to it that in the application of the labor laws of the country where they reside Soviet citizens are not discriminated against. Furthermore, Soviet consuls abroad are commissioned to perform marriages and grant divorces to Soviet citizens.[55] These acts, however, have full legal efficacy only in cases where there is a special agreement to this effect between the Soviet Union and the country where the marriage or divorce takes place. Lacking such sanction, the performance of the marriage, or grant of the divorce, by the Soviet consul will have legal effect only within the Soviet Union. In corroboration with national legislation on the subject are the provisions of the Consular Conventions with Poland and Germany which repeat in more general terms the provisions of the Statute of 1926. Thus, Article 15 of the Consular Convention with Poland admits the right of Soviet consuls to register births and deaths and to perform marriages, provided, however, that such acts be registered with the competent civil authorities of Poland. Similar provisions are found in Articles 19 and 20 of the Consular Treaty with Ger-

[54] *Cf.* Arts 24, 33 and 38 of the Statute of 1926, and Arts. 11 and 12 of the Convention with Poland, and Art. 16 of the Treaty with Germany

[55] Art 57 of the Statute of 1926: "A consul must keep records of the civil status of the citizens of the U.S.S.R. residing abroad." The literal expression "acts of civil status" as given in the Statute, is a new formula for the commonly known terms "marriage," "divorce," and all other technical expressions relative to domestic relations.

many. The final protocol to this treaty contains an additional provision by which Soviet consuls in Germany, "in so far as they are authorized thereto by the laws of their country, are given the right to effect the divorce of persons at their joint request who have contracted marriage before them." [56]

The functions of Soviet consuls abroad in respect to the Soviet Red Fleet, Air Forces and Merchant Marine are almost identical with the corresponding functions of other consuls. There is nothing new either in the provisions of Article 136 of the Statute of 1926, which prescribes that in case of a war in which the U.S.S.R. is a neutral its consuls should take measures to secure for the U.S.S.R. all the privileges which neutral countries enjoy in accordance with international treaties and custom.

Privileges

Consular privileges are to be examined from the following aspects: personal immunity of consuls, immunity of consular archives and offices, right of communication, ceremonial privileges and, finally, the privileges of the consular personnel. In all of these aspects the national legislation of the Soviet Union has adopted the principle of reciprocity. Article 11 of the Statute of January 14, 1927, states that foreign consuls in the U.S.S.R. shall enjoy their privileges in accordance with the rules of international law only under condition that the principle of reciprocity is recognized. The failure to accord these privileges to the Soviet consuls on the part of the nationalist government in China in 1929 resulted in the privileges of Chinese consuls in the U.S.S.R. being abrogated by the Soviet Government.[57]

Personal Immunity

The immunity of the consul is to be examined from two aspects: personal immunity and immunity of his residence. The former in its turn involves a differentiation between his two capacities, private and official, and between the two forms of jurisdiction which might be claimed over him: civil and criminal. There is no question but that foreign consuls in their private capacities are subject to the local jurisdiction in civil cases. The rule of international law is contrary, however, where the civil transactions are performed in the official capacity of the consul,

[56] *Sborn Deistv Dogov*, III, 1926, p. 34; LIII, 163, L.N.T.S.
[57] Art. 25. *Cf.* Consular Agreement with Sweden, and Treaties of Commerce with Latvia, Estonia, and Norway.

such as renting quarters for the consular offices, or buying the necessary equipment for them, and the like. Although there is no direct rule found in the Soviet law on this point, Article 11 of the Statute of January 14, 1927, begins with the general statement that

"Consular officers of foreign states [in the U.S.S.R.] enjoy, subject to reciprocity, all the rights and privileges accorded them by the rules of international law."

The particulars enumerated in the clauses of this article, however, contain no reference to the exemption of consuls from local jurisdiction in civil cases.

For criminal offenses not connected with their official duties, international law likewise does not remove consuls from the local jurisdiction. This is fully admitted in the Soviet law, which formulates this principle in a statutory provision that foreign consuls in the Soviet Union can be arrested, although only by decree of the court, and may be held without bail although only by order of the judicial authorities and only in instances where the offenses charged fall within the jurisdiction of the Supreme Court of the U.S.S.R., the Supreme Courts of the Union Republics, or the military tribunals.[58] Hence it follows that consuls cannot be arrested by administrative orders. The practical application of this law, which in itself is very complicated, is made still more intricate by provisions of Soviet treaty agreements. Thus Article 4 of the Consular Convention with Poland provides that a consul cannot be held without bail, or arrested either by administrative order or by order of the court except when he is charged with offenses especially enumerated in the criminal codes of the Contracting States, in which case the diplomatic representatives must be immediately informed.[59] When he is convicted of a

[58] Art. 11, Clause "d" of the Statute of Jan. 14, 1927.

[59] Art 4 reads. "The consuls, consular secretaries and consular attachés of one Contracting Party shall not be subject to arrest in the territory of the other Party, whether as an administrative measure or with a view to preventive detention or in execution of a sentence delivered by a court, except in the following cases:

"(1) In execution of a sentence delivered by a court in the territory of the Union of Soviet Socialist Republics for acts punishable under Articles 85 (parts 1 and 2), 142, 143, 149, 161, 166, 167, 169, 170, 183, 184 and 213 of the Penal Code of the Federal Socialist Republic of the Russian Soviets, which was put in force by a Decree of the Central Executive Pan-Russian Committee and promulgated

crime for which he cannot be arrested under the Convention, the government of the country for which he acts must immediately recall him if requested to do so by the authorities of the country of his sojourn. Of political interest in respect to this limitation upon arrest is the provision that the articles of the criminal codes of Russia and Poland relative to espionage are applicable to consular officers only when they are charged with military espionage on behalf of a third state.

The Consular Treaty with Germany differs from that with Poland. According to Article 11 of the former, consuls may be arrested by order of the court or with a view to preventive detention, in which case, however, the diplomatic representative must be informed preliminary to the arrest. Quite different from these two agreements is the Treaty with Afghanistan of February 28, 1921, which assures absolute personal immunity to the consuls and exemption from local jurisdiction.[60]

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on July 1, 1922, in the Official Bulletin of Laws and Decrees; or in the territory of the Polish Republic for acts punishable under Articles 427, 429, 430, 431 (paragraph 2), 434, 435, 453, 454, 455, 467, 500 (paragraph 1), 513, 522, 526, 589, 108 (part 1 and paragraph 6 of part 3) and 119 of the Penal Code of 1903; or under Articles 106, 107, 108, 109, 111, 112, 114, 115, 116, 118, 119, 120, 121, 199 (paragraph "d"), 134, 135, 136, 156, 93, 125, 126, 127, 128, 98, 190, 191, 192, 193, 194, 195, 141 and 67 of the Penal Code of 1852; and under Articles 146, 147, 149, 275, 211, 212, 214, 215, 224, 226, 225, 239, 182, 176, 177, 178, 249, 250, 251, 90 (paragraphs 4 and 5) and 92 (paragraph 1) of the Penal Code of 1871.

"(2) In case of a criminal prosecution for acts punishable under the articles enumerated in the preceding paragraph, when the accused has been detected in the act

"In case a consul, consular secretary or consular attaché should be found guilty by a court of an act punishable under an article of the Penal Code which is not included in the list in paragraph 1, the Government of the appointing State shall be bound, at the request of the Government of the country of residence, to recall the guilty official forthwith

"If a consul or any member of the consular staff is arrested, indicted or sentenced by a Court, the Government of the country of residence shall immediately inform the diplomatic representative of the appointing State"

The fact that each Soviet Republic has its own criminal code (true to say, mostly copied from that of the R.S.F.S.R.), and that Poland has three Criminal Codes (one each for its three integral parts, taken over from Germany, Austria and Russia), leads to very undesirable complications both in regard to the efficiency of the consular service and in regard to the dignity of the consular offices. It was on these grounds that it was deemed necessary to have an additional protocol attached to the Convention with a view to exempting from the application of Article 4 certain provisions of the specified articles of the various Penal Codes. The subjects dealt with varied from "postage stamps, railway tickets . . . and other vouchers for payments made to the State" (Art. 119 of the Polish Penal Code of 1852) to "the confinement of a sane person in a lunatic asylum" (Art. 93 of the same code) and "constraining [a woman] to engage in prostitution." (Art. 98 of the same code.)

[60] Art. 3, Note 1 (*Sborn. Deistv. Dogov.*, II, 1921, p. 16).

Different is the situation as to the liability of consuls to answer for the offenses connected with their office. The general principle of international law is that in such instances the consuls are subject only to the law of the country for which they act. In the Soviet law this principle is likewise incorporated in a statutory provision:

"c. [Foreign consuls in the U.S.S.R.] are not subject to the jurisdiction of the Courts of the U.S.S.R. and of the Union Republics for offenses of misfeasance." [61]

In much more general terms this principle is formulated in international agreements entered into by the Soviets. Thus Article 5 of the Consular Convention with Poland reads:

"Consuls and consular associates, in so far as they are citizens of the country which appointed them, are not subject to the jurisdiction of the [authorities] of the country in which they hold office, in regard to their official functions." [62]

Exemption of consuls from taxes and charges in the country of their sojourn, is accepted as a general rule. According to Soviet law, foreign consuls are exempt:

". . . from all direct taxes, state and local, as well as from individual contributions both in kind and pecuniary, with the exception of taxes on the buildings, land and other property which is in their personal use." [63]

The provisions of Article 7 of the Convention with Poland and of Article 6 of the Treaty with Germany are based on the same principle. To quote the former:

"Consuls and consular officials who are nationals of the State which appointed them, together with their wives and minor children, shall be exempt from all direct personal taxes which are imposed by any authority whatever in the State of residence.

"The persons mentioned above shall also enjoy immunity from personal contributions, or from contributions in kind, which are imposed by the State.

[61] Art. 11, Clause "c" of the Statute of Jan 14, 1927 (*Sobr Zak i Rasp. S.S.S.R.*, 1927, I, p. 71).
[62] *Cf* Art. 10 of the Consular Convention with Germany.
[63] Art. 11, Clause "a" of the Statute of Jan. 14, 1927.

"Nevertheless, the above-mentioned exemptions shall not extend to imposts or taxes on any immovable property which these persons possess or manage, or to capital which they may possess. . . ." [64]

From the fact that there is no mention of the exemption of consuls from customs duties, it follows that the Soviets do not extend any customs privileges to foreign consuls, and if such privileges are accorded to them it is done in conformity with special conventions and not by national law or international custom.[65]

The Soviet laws contain no provisions relative to consular privileges in respect to liability to aid in local judicial prosecutions. However, in the Consular Convention with Poland and in the Consular Treaty with Germany it was provided that consuls were not relieved from the duty of appearing in court as witnesses and that in case of refusal to do so the possible complications were to be settled through diplomatic channels.[66]

As a general rule, international law does not extend the right of extraterritoriality to the residence of the consul. The instances in which consular conventions include provisions forbidding entry into the residence of the consul without his consent are very rare. An illustration is found in Article 5 of the Consular Treaty with Germany, according to which the local authorities may enter the residence of the consul only with his consent. The Treaty with Afghanistan of 1921 goes even further: it extends the right of extraterritoriality and complete immunity to the residence of the consul, except when asylum be given to persons whom the local authorities officially declare violators of local laws.[67]

mmunity of rchives and Offices

In respect to the immunity of consular archives and offices, Articles 6 of the Statute of 1926, and 11 of the Statute of January 14, 1927, as well as Article 10 of the Consular Convention with Poland, provide that the archives and official correspondence of the consuls are inviolable. In accordance with Article 10 the consul may permit the local authorities to search the consular offices on condition that neither official correspondence nor the equip-

[64] *Sborn Deistv Dogov.*, III, 1926, p. 40.

[65] Thus, Art. 7 of the Consular Treaty with Germany establishes special limits for the personal property of the consuls which is exempt from customs duties. Art. 9 of the same Treaty provides for the exemption from customs duties of the official equipment of the newly arriving consul.

[66] Arts. 6 and 12, respectively.

[67] Art. 3, Clause "e" of Note 1 (*Sborn. Deistv. Dogov.*, II, 1921, p. 16).

ment of the offices can be placed under or taken into custody.[68] This provision is interesting because it leaves to the Soviet consuls the right to consent to such examination. However, there is no indication that the archives are comprehended under the term "offices."

Communications

The Soviet law on the communications of the Soviet consular organization has been already discussed. International law imposes no restrictions on the means of communication available to the consul in the performance of his functions. The Soviet law is in accord with this. Thus, Article 14 of the Statute of January 14, 1927, gives to foreign consuls in the U.S.S.R. the right of free communication with their respective diplomatic missions by "mail, and clear or ciphered telegrams."[69] This liberty is likewise accorded in the treaties which the Soviets have entered into. Article 3 of the Treaty with Afghanistan of 1921 provided that the consuls should have the right of free communication with the diplomatic representative by telegraph, wireless or telephone.[70] Unsettled, to a certain degree, in international law is the right of consuls to use diplomatic couriers for carrying their communications. While there is no provision on this point to be found in Soviet law, in their international practice the Soviets accord this right to foreign consuls. A proof of this is found in the Notes exchanges between the Governments of the U.S.S.R. and Poland on the very day the Consular Convention was signed. According to these Notes the Soviet Government agreed that the Polish Consuls in the U.S.S.R. were to have the right of communication with their respective diplomatic missions, or among themselves, through diplomatic couriers, provided that the mail was not sent more than twice a month, and that it did not weigh over six kilograms.

Ceremonial Privileges

There is nothing new from the point of view of international law in the Soviet laws in respect to the ceremonial privileges of consular officers. As a general rule the Soviet practice follows very closely the rules accepted by non-communist states.[71]

[68] *Supra*, p. 212. *Cf* also Art 5 of the Treaty with Germany of Oct 12, 1925 (LIII, 163, L N T S.)

[69] *Supra*, p 169.

[70] *Sborn Deistv Dogov* III, 1926, p 49

[71] *Cf* Art. 25 of the Statute of 1926; Joint Decree of the Central Executive Committee and of the Council of Peoples' Commissaries of Aug 29, 1924, on

Generally international law extends the privileges enjoyed by consuls to the personnel of the consulates, provided that they are citizens of the sending state. The status of such persons who are not citizens of the country for which they act is determined in Soviet law by Article 12 of the Statute of January 14, 1927:

"In all other instances, not provided for in Article 11, the status of consular representatives [*sic*], as well as of persons belonging to the official consular personnel of the foreign consulates, who are not citizens of the Union of S.S.R., is determined either by conventions concluded between the Union of S.S.R. and foreign states, or by agreements between the People's Commissariat for Foreign Affairs and the diplomatic representations of the respective foreign states." [72]

The outstanding peculiarity of the Soviet consular service is its political character. Furthermore, consular officers are not placed in subordination to the agents who are especially assigned to take care of Soviet economic and trade problems in foreign countries. Finally, Soviet consuls are commissioned to perform duties which can be explained only as a result of the specific social structure and of the specific aims of the Soviet political order: among these are the right to order Soviet citizens to return to their home country, and to see to it that Soviet citizens abroad benefit by the labor laws of the country of their sojourn on an equal footing with the local toiling masses.

ummary

To summarize, whatever the benefit or value of the novel Soviet contributions to the international law on diplomacy—abolition of diplomatic ranks and limitations upon the volume of diplomatic mail, and on the consular service—the political character of the consular functions,—essentially the Soviet law on diplomatic and consular service may well be called conservative. The classical *jus legationis* is considered by the Soviets as a basic prerogative of sovereign states only. The rules regulating foreign relations are embodied both in national legislation and international agreements in the classical tradition, the distinction between the diplomatic and consular services being fully admitted by the Soviets.

Flags and Pennants; Arts. 2143 and 2149 of the Naval Code of 1925; Art. 9 of the Convention with Poland, and Art 9 of the Treaty with Germany.

[72] *Sobr Zak. i Rasp. S.S.S.R.*, 1927, I, p. 71.

CHAPTER IX

TREATIES

General Considerations

THE doctrine *pacta sunt servanda* is an ancient one, universally acknowledged, but the principle upon which it rests has been the subject of much disagreement. In early times the force which international treaties were relied upon to exert was thought to have its origin in the religious atmosphere which usually surrounded their conclusion, consecrated by oaths and solemn promises. By the time of Grotius, this theory had given way to precepts of natural law. It was a "categorical imperative" that impelled the parties to recognize the moral obligation assumed in treaties. In more recent times it has been maintained that "international treaties have obligatory force only when there are *norms which are above treaties*, that is, norms which *confer upon* the treaties their legal power."[1] By these "norms" we understand today the sovereign authority of the state, which is the source of the supreme law of the land. However, sovereignty in the usual acceptance of the term, while it may account for the authority to enter into treaties, is hardly adequate to furnish the basis for their binding force, since logically sovereignty is incompatible with obligation, and theoretically there would be nothing to prevent a sovereign state from releasing itself from the engagement undertaken in international treaties.

Despite the sanctity of treaties, whether based upon religious, moral, or political theory, practical measures have customarily been resorted to to insure their being carried out. One of the earliest was the taking of hostages, who served as a pledge for the fulfillment of the treaty.[2] This custom is preserved today

[1] Jellinek, *Die Rechtliche Natur der Staatenverträge*, pp. 31ff.

[2] Hostages in the real sense were used for the last time in 1748, when England gave France two peers as hostages for the fulfillment of a treaty. *Cf.* the instance when Poland in the eighteenth century pledged her crown jewels to secure fulfillment of a treaty concluded with Prussia.

in the hypothecation of certain areas or funds for the service of the treaty. Customs receipts and other specified revenues are frequently turned over to one of the contracting parties for collection and control.[3] Treaties of guaranty have been resorted to as a means of surety that the obligations undertaken in international treaties will be carried out.[4] Forcible measures such as war, or in modern times, military occupation of a part of the territory of one of the contracting parties by the other have been likewise resorted to.[5] Concerted action is contemplated by the Covenant of the League of Nations,[6] and economic boycotts and embargoes have been advocated.[7] Whereas these means are effective to a certain extent as a medium to compel a delinquent state to fulfill its treaty obligations, they still fall short of providing complete assurance in this regard. Treaties of guaranty are subject to the same weaknesses as other treaties, the temptation being great for the more powerful state to take advantage of the weaker one. Joint military and economic action to be effective must be applied generally, and national jealousies prevent successful coöperation. As a practical matter it cannot be denied that treaties depend more upon the disparity of strength between the Contracting Parties, or upon the degree of the practical and material usefulness of the treaty to all the parties to it, than upon any abstract theories. In fact, irrespective of technical considerations, treaties may be divided into two groups: those which have been forced upon weaker states in the interests of stronger ones, be it by force of arms, by economic compulsion, or otherwise, and those which are of mutual benefit to the Contracting Parties. Treaties of the first group will be carried out only so long as the force which dictated them remains adequate; those of the second only so long as the mutual benefit exists.[8]

[3] *Cf.* the right to collect customs duties, and the monopoly of the salt industry enjoyed by European Powers in China as a guaranty that China would live up to her obligations undertaken after the Boxer Rebellion.

[4] As the Treaties of 1831 and 1839 by which Great Britain, France, Prussia, Austria and Russia guaranteed the neutrality and independence of Belgium.

[5] Occupation of a portion of French territory by German troops in 1871, occupation of the Ruhr region by French troops in 1923, and occupation of Corfu by Italian troops in the same year are outstanding illustrations in modern times.

[6] Art. 10.

[7] Clause 1 of Art. 16 of the Covenant of the League of Nations.

[8] Illustrations of the first group are furnished by the Brest-Litovsk Treaty of 1918, and the Treaty of Peace with Poland of 1921. Indirectly here belong also

In the eyes of the Soviets these practical considerations of political necessity and opportunism outweigh the claims of all theories involving a moral obligation to fulfill treaty engagements. This is quite natural in view of the political isolation of the Soviets resulting from the mutual distrust between them and the non-communist world, their faith in the righteousness of the class struggle which they are furthering, and the temporary character of the political entity at present embodied in the State of Workers and Peasants.

Technical Problems

According to Martens, international treaties comprise "all kinds of obligations mutually agreed upon by states, irrespective of whether they are expressed in pacts, conventions, notes or declarations."[9] The first technical problem connected with international treaties is that of the parties thereto. According to international law, only sovereign states have the right to conclude international treaties or agreements. There are, however, exceptions to this general rule, such, for instance, as Egypt and Bulgaria, that had the right (with certain restrictions) to enter into treaty agreements while they still remained under the suzerainty of Turkey. In more recent times an exception is found in the status of the British Dominions, which since the Imperial Conference of 1926, may conclude independent international agreements. In federations, as for instance in the United States of America, treaties are usually concluded by the central federal authority.[10] In confederations, on the contrary, as for instance in Switzerland, the right of treaty-making may be extended also to the individual units, when such treaties deal with problems relative to local matters.

Parties

In the Soviet Union, the component republics, like the states of the United States of America, do not enjoy any treaty-making

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the Treaties of Peace between the Soviets and Finland, Estonia, Latvia and Lithuania. The other group includes such international agreements as the International Red Cross Conventions, the Geneva Convention of 1929 for the Amelioration of the Condition of the Wounded and Sick, and the International Sanitary Convention of 1926.

[9] Martens, *Sovremennoe Meshdunarodnoe Pravo Tsivilizovannykh Narodov*, 1898, I, pp. 191–192.

[10] Art. 1, Clause 10 of the Constitution (*Constitution of the United States of America as amended to January 1, 1923*) Government Printing Office, Washington, 1923.

power. Not only is this stipulated in the Constitution, but it is reiterated in Article 1 of the General Statute on the People's Commissariat for Foreign Affairs, promulgated on November 12, 1923:

". . . The People's Commissariat for Foreign Affairs is charged with the conduct of the diplomatic relations of the U.S.S.R. and of the component republics of the Union with foreign states." [11]

Prior to the promulgation of the Union Constitution, however, certain of these republics had exercised the treaty-making power. Confusion which must otherwise have arisen as a result of this change was avoided by a series of notifications which were issued to the representatives of foreign states in Moscow by the Peoples' Commissariats of the Union Republics to the effect that after the formation of the Union all foreign relations of the respective Republics were to be conducted by the central authorities of the Union as a whole.[12] A similar notification was also conveyed to the representatives of foreign states in Moscow on July 23, 1923, by the Central Executive Committee of the newly formed U.S.S.R.[13]

International agreements are usually concluded in the name of the states parties thereto. Soviet Russia in its early treaties was designated in a great variety of terms, including "Russia," "the Government of the R.S.F.S.R.," "The Council of Peoples' Commissaries," and even "The Peoples' Commissaries." [14] This lack of uniformity continued even after the formation of the Union. Treaties were entered into by "the Union of S.S.R.," as in the Customs Convention with Italy of February 7, 1924, and by "the Government of the U.S.S.R.," as in the Treaty of Commerce and Navigation with Italy of the same date.[15]

By Article 1, clause 1, of a decree of May 21, 1925, on the

[11] *Sborn. Deistv Dogov*, I, 1924, p 29.

[12] Notification of the People's Commissariat for Foreign Affairs of the White-Russian S.S.R. of July 21, 1923; of the Transcaucasian S.F.S.R. of July 21, 1923; of the R.S.F.S.R. of the same date; and of the Ukrainian S.S.R. of July 16, 1923 (*ibid.*, I, 1924, pp. 20–23).

[13] *Ibid.*, I, 1924, p. 24

[14] *Cf* Agreement with France of Apr. 20, 1920; Treaty of Peace with Estonia of Feb 2, 1920, and Provisional Agreement with Germany of May 6, 1921 (XI, 30, L.N.T.S., and VI, 268, L.N.T.S., for the Treaty with Estonia and the Agreement with Germany, respectively).

[15] *Sborn Deistv Dogov*, II, 1925, pp. 35 and 49, respectively.

Method of Concluding and Ratifying International Treaties of the U.S.S.R., treaties requiring ratification must be concluded in the name of

"the Congress of Soviets of the U.S.S.R, in case the decision to conclude such treaties was voted by the Congress of Soviets of the U.S S.R, and of the Central Executive Committee of the U.S.S.R. in other cases." [16]

By clause 2 of the above article, all international treaties and agreements which do not require ratification—these being a large majority—are to be concluded in the name of the Council of Peoples' Commissaries. Since there have been no treaties of the first of these groups concluded in the past, and inasmuch as there is little likelihood of there being any in the future,[17] it may be accepted as a general rule that the most important treaties of the Soviet Union should be concluded either in the name of the Central Executive Committee of the U.S.S.R., or in that of the Council of Peoples' Commissaries of the Soviet Union. However, examination of the treaties and agreements entered into by the U.S.S.R. reveals the same inconsistency as existed prior to the formation of the Union.

Treaty-making Power

Closely connected with the problem of parties to international agreements is that of the state organs in which the treaty making power is vested. Usually the organ having the right of concluding international treaties in the name of the state is the head of the executive authority. In absolute monarchies it was the monarch himself, who exercised this function within his sole discretion. In constitutional monarchies, treaties are concluded by the titular head of the government, a certain check being exercised by the parliament or similar body. In states having a republican form of government, the treaty-making power is usually vested in the executive, subject to the consent of the legislative body. In the U.S.S.R., the right to conclude international treaties belongs to the Union, and is vested in its "supreme organs." Article 1 of the Constitution of the U.S.S.R. of 1923 reads in part:

[16] *Sobr. Zak. i Rasp S.S.S.R.*, 1925, I, p. 572.

[17] The Congress of Soviets meets only once every two years and concerns itself mainly with problems of social and economic reconstruction within the Soviet Union.

"1. Within the competence of the U.S.S.R., exercised through its supreme organs, fall—

"*a.* The representation of the Union in its international relations, the conduct of all diplomatic relations, and the conclusion of political and other treaties with other states. . . ."

"*c.* The conclusion of treaties for the admission of new republics into the Union. . . ."

"*f.* The ratification of international treaties." [18]

This article leaves no doubt that the whole control of the foreign policy of the Soviet Union, including the making of international treaties, is vested in the supreme organs of the Union, specifically, according to Article 8 of the Constitution,

". . . in the Congress of Soviets of the U.S.S.R., and, during the interim between Congresses of Soviets, in the Central Executive Committee of the U S.S.R , which is to consist of the Council of the Union and the Council of Nationalities." [19]

International practice knows instances where the treaty-making power has been delegated by the central government to a subordinate branch of the government, or where the commanding officers of the armies or fleets have entered into international agreements of a military character.[20] No illustrations of this are found, however, in the practice of the Soviet Union.

Delegates

In modern times, of course, treaties are not ordinarily signed by the Parties in whose name they are concluded. The practice is that special persons are appointed for this purpose. It is essential in these instances that such persons be provided with special papers evidencing their "full powers" to negotiate. The Soviet Government does not deviate from this general rule of international law. To quote Articles 13 and 14 of the decree of May 22, 1923:

"13. Representatives Plenipotentiary of the U.S.S.R., accredited to foreign governments, as well as the heads and members of delegations assigned for negotiations concerning the conclusion of foreign treaties which are subject to ratification, are appointed and recalled by decrees

[18] *Sist. Sobr. Deistv. Zak. S.S.R.*, I, p. 5.
[19] *Ibid.*, I, p. 7.
[20] Under the Russian Empire, for instance, the Governor-General of Turkestan had the power of concluding treaties with the countries bordering that section of the Russian Empire

of the Central Executive Committee of the U.S.S.R., or by its Presidium.

"14. Full Powers and Letters of Recall to . . . the heads and members of delegations appointed to negotiate international treaties which call for ratification require the signature of the president and secretary of the Central Executive Committee of the U.S.S.R. and the counter-signature of the People's Commissary for Foreign Affairs." [21]

The heads and members of the delegations appointed to negotiate treaties which do not call for ratification [22] are appointed by the Council of Peoples' Commissaries of the U.S.S.R. In this case the Full Powers for the delegates are signed by the Chairman of the Council of Peoples' Commissaries and countersigned by the People's Commissary for Foreign Affairs of the U.S.S.R.[23] Besides these Full Powers the members of the delegation are furnished with instructions on the matter to be discussed during the negotiations. In the Soviet Union such instructions are usually nothing but the project of the treaty which has been previously drafted, examined and approved by the Council of People's Commissaries.[24]

A necessary preliminary to the conclusion of treaties with foreign states is approval by the Council of Peoples' Commissaries. The rule to this effect is found in Article 1 of the Decree of October 2, 1925, which reads:

"Treaties and agreements to be concluded with foreign states, prior to being signed in the name of the U.S.S.R. are to be submitted by the People's Commissariat for Foreign Affairs for preliminary approval to the Council of Peoples' Commissaries of the U.S.S.R." [25]

Ratification

The next problem in regard to treaties in general is ratification. There is a theoretical problem connected with ratification: is it a condition subsequent, or the final formality of concluding a treaty? At present the theory supporting the latter point of view prevails, with the result that in modern treaties, mention of ratification is often omitted. On the other hand, when no ratification is required, a provision to that effect is usually included. Every

[21] *Sobr. Zak. i Rasp. S.S.S.R.*, 1925, I, p. 530.
[22] See, *infra*, pp. 244ff.
[23] Arts 15 and 16 of the same Decree (*ibid.*, 1925, I, p. 530).
[24] *Cf supra*, p. 239.
[25] *Sobr. Zak. i Rasp. S.S.S.R.*, 1925, I, pp. 1009–1010.

state has the right to refuse ratification even though this results in the treaty remaining inoperative, and this refusal is not considered as an unfriendly act.[26] In order to bring a treaty into force, however, it must usually be ratified or approved by the state, without change in the wording.[27] It is for the national laws to determine the formalities of ratification. In countries with a parliamentary form of government, treaties calling for ratification are in fact usually submitted to the legislative bodies for approval.[28] Ratification is usually affected by signing specially drafted ratification papers. These are then exchanged among the parties, or, in the case of multipartite treaties, are deposited with the Ministry of Foreign Affairs of one of the signatory states, usually the one where the treaty has been signed, or, since the establishment of the League of Nations, with the Secretariat thereof. A definite period is often prescribed within which ratification must be effected. If this is exceeded, the treaty remains abortive, unless the period is extended. Usually the treaty dates from the original signing, but it is customary to make a provision in the treaty that it will come into force upon notification to the other parties that ratification has taken place, or, in the case of multipartite treaties, upon notification of the deposit of a certain number of ratifications.

Soviet law distinguishes between treaties that require ratification and those that do not. According to decrees promulgated in 1925 by the Central Executive Committee, ratification is necessary for treaties of peace, for treaties concerning changes of the boundaries of the Union, and for treaties which require ratification according to the law of the countries with which the treaty is concluded. Obviously, ratification must also take place

[26] Thus in 1922 the Council of Peoples' Commissaries of the R S F.S R refused to ratify the Commercial Convention with Italy because it did not provide for *de jure* recognition of the Soviets

[27] Partial ratification with reservations or conditions is insufficient, unless this is authorized by the treaty, or the other party consents. In the latter case either the wording of the treaty should be modified accordingly or a wholly new treaty should be made and ratified This is, however, not always observed in practice

[28] Thus, in most of the Continental states the consent of Parliament is required, as a rule, at any rate for the more important treaties In the United States of America the President must obtain the consent of the Senate with a two-thirds majority. In Switzerland it is not the President but the Federal Council which is the competent authority, while in England theoretically the King alone is vested with the power of ratification

in the case of treaties having special provisions to this effect.[29]

The variety of designation of the Party in whose name the earlier Soviet treaties were concluded led to a natural confusion as to the authority by which they should be ratified when ratification was required. Thus, Article 49 of the Constitution of the R.S.F.S.R. of 1918 read in part:

"49. Within the competence of the All-Russian Congress of Soviets and of the All-Russian Central Executive Committee fall· . .

"(*i*) Relations with foreign states, declaration of war, and conclusion of peace;

"(*j*) Making loans, and the conclusion of customs and commerce treaties, and other financial agreements, . . ." [30]

While there is no mention in the laws of the R.S.F.S.R. of vesting the authority of ratification with definite organs of the State, the conclusion is logical that the power of ratification of treaties was given to these two bodies. Treaties of peace, however, could be ratified only by the All-Russian Congress of Soviets. To quote Clause "b" of Article 51 of the Constitution of the R.S.F.S.R. of 1918:

"51. Within the exclusive competence of the All-Russian Congress and of the All-Russian Central Executive Committee fall: . . .

"(*b*) Ratification of treaties of peace; . . ." [31]

In practice, however, this was not carried out consistently. Thus, the Treaty of Peace with Finland of October 14, 1920, was ratified on October 23rd of that year by the All-Russian Central Executive Committee, as were the Treaty of Peace with Latvia of August 11, 1920, and that with Lithuania of July 12, 1920. In the case of the Treaty of Peace with Estonia of February 2, 1920, the Soviet official publication of 1921 containing the text of the Treaty simply says: "Ratified on February 4, 1920." [32] In a later "Collection of Treaties in Force," published by the U.S.S.R. in 1924, the note to the Treaties of Peace with Estonia, Latvia and Lithuania says "Ratified by the Government of the R.S.F.S.R.

[29] *Sobr. Zak. i Rasp S.S.R.*, 1925, I, pp. 572 and 1009

[30] *Sist Sborn. Vazhn Dekretov*, 1917–1920, p. 5

[31] *Ibid*, 1917–1920, p. 5.

[32] *Sborn Deistv Dogov*, I, 1921, pp 99, 49, 62 and 116 respectively; III, 6, L.N.T.S., II, 196, L.N.T.S., III, 106, L.N.T.S., and XI, 30, L.N.T.S., respectively.

. . ." while as to the Treaty with Finland it repeats the old formula: "Ratified by the All-Russian Central Executive Committee." [33]

After the formation of the Union, according to Articles 1 and 8 of the Constitution of the U.S.S.R., the power of ratification was vested in the Congress of Soviets of the U.S.S R., and, during the two-year interim between its sessions, in the Central Executive Committee of the U.S.S.R.[34] In practice this resulted in the power of ratification granted in the Constitution being exercised by the Central Executive Committee. A decree of May 21, 1925, provided that:

"The Presidium of the Central Executive Committee of the U.S.S.R. *ad interim* between the sessions of the Central Executive Committee of the U.S S.R. . . . has the right of ratification of international treaties and agreements." [35]

This constitutes an exception, for cases where the Central Executive Committee is not in session, to the general rule laid down in the Constitution. The examination of Soviet treaties reveals no evidence that the Presidium of the Central Executive Committee has ever exercised this authority, however.

Treaties which do not require ratification, but which do not become operative immediately upon signature, must be approved by the Council of Peoples' Commissaries. Article 3 of the Statute of November 12, 1923, on the Central Executive Committee provides:

"3. Within the competence of the Council of Peoples' Commissaries of the Union of Socialist Soviet Republics fall . . .

(*e*) examination of treaties and agreements with the governments of foreign states, and approval of those which do not call for ratification." [36]

Article 1 of the Decree of October 2, 1925, reads:

"1. The treaties and agreements with foreign states signed by the delegates of U.S.S.R. are submitted by the People's Commissariat for

[33] *Sborn. Deistv. Dogov*, I, 1924, pp. 206, 86, 106 and 183, respectively; XI, 30, L.N.T.S., II, 196, L.N.T.S., III, 106, L.N.T.S. and III, 6, L.N.T.S., respectively.
[34] Art. 8.
[35] *Sobr. Zak. i Rasp S.S.S.R.*, 1925, I, p. 572
[36] *Sobr. Uzak. i Rasp R.S.F.S.R.*, 1923, I, p. 1828.

Foreign Affairs to the Council of Peoples' Commissaries of the U.S.S.R. for the purpose of:

"(*a*) Informing the Council of Peoples' Commissaries of the signature of acts which come into force in virtue of signing;

"(*b*) Examination of treaties and agreements with the governments of foreign states, and approval of those which do not require any ratification;

"(*c*) Examination by the Council of Peoples' Commissaries of the U.S.S.R. and further submission to the Congress of Soviets of the U.S.S.R., to the Central Executive Committee of the U.S.S.R. or its Presidium for ratification of treaties calling for ratification." [87]

This brings up the question as to the difference between ratification and approval of treaties. It appears that approval is a much less complicated process than ratification. Treaties requiring approval are submitted only to the Council of Peoples' Commissaries; those calling for ratification are also submitted to the same Council, but must then be forwarded with its opinion to the Congress of Soviets, the Central Executive Committee, or its Presidium, as well. In other words while approval may be granted by a single authority, ratification is obtained only by the concurrence of two opinions.

In comparing the Soviet constitutional provisions and national laws on the subject of ratification with those of non-communist states, two things are at once noticeable. Firstly, the Soviets exempt large categories of treaties from the necessity of ratification. This practice is not entirely unknown to the Western European states, but it has never before been embodied in any form of constitutional provision or national legislation. Secondly, the classes of treaties calling for ratification are limited to treaties of peace and those changing national boundaries. As to ratification, the method used in the Soviet Union does not differ from that of any other state where ratification is effected by legislative bodies.

Promulgation

The next point of interest is the way in which treaties signed by the Soviets are promulgated within the Soviet Union. Prior to the formation of the Union, there were no special laws relative to the publication of treaties. It was only on August 22, 1924, that a decree was passed, outlining the method in which the treaties of the U.S.S.R. should be published. To quote Article 11:

[87] *Sobr Zak i Rasp S.S.S.R*, 1925, I, p 1010.

"Treaties, agreements and conventions concluded by the U.S.S.R. with foreign states are published in the "Collection of Laws and Regulations of the Workers' and Peasants' Government of the U.S.S.R." in the following order:

"(*a*) Treaties, agreements and conventions calling for ratification by the government of the U.S.S.R. or coming into force upon the exchange of notification between the signatory states, are published only after the exchange of ratification or notification has taken place;

"(*b*) Treaties, agreements and conventions which come into force immediately upon signature by the parties, or at a certain time after the signing, or upon publication in the official organs of the U.S.S.R., are published [immediately] upon conclusion.

"*Note.* Treaties, agreements and conventions which are to be published are sent to the Department of Publication of Laws by the People's Commissariat for Foreign Affairs with the required visa of the Peoples' Commissary or of his deputy, without which [visa] publication cannot take place." [38]

Besides publication in the official collection of laws, all Soviet treaties are also found in the official collection of treaties published by the People's Commissariat for Foreign Affairs.[39]

Accession

Aside from treaties concluded by it independently, a state may become a party to international agreements already in force among other Powers, by accession. Soviet law also recognizes this principle. Article 5 of the Decree of October 2, 1925, reads:

"(5) If it becomes necessary for the U.S.S.R. to accede to international treaties or agreements [already] in force, the right of accession to which has been extended to all states, the project of the decree for such accession is to be submitted by the People's Commissariat for Foreign Affairs to the Council of Peoples' Commissaries of the U.S.S.R. in the regular way. Upon approval of this project, the decree is published in the collection of laws and regulations of the Workers' and Peasants' Government of the U.S.S.R." [40]

[38] *Sobr. Zak. i Rasp. S.S.S.R.*, 1924, I, pp. 99–100

[39] Prior to the formation of the Union it was *Sbornik Deistvuiuschikh Dogovorov, Soglashenii i Konventsii, zakliuchennykh R.S.F.S.R. s inostrannymi gosudarstvami* (collection of treaties, agreements and conventions in force concluded by the R.S.F.S.R. with foreign states) It contains treaties concluded from the beginning of the Communist Régime up to June 1, 1923 Its five separate volumes were published in 1922 and 1923. After the formation of the Union this collection was called *Sbornik Deistvuiushchikh Dogovorov, Soglashenii i Konventsii, zakliuchennykh s inostrannymi gosudarstvami* Seven volumes have been published to 1934.

[40] *Sobr. Zak. i Rasp. S.S.S.R.*, 1925, I, pp. 1009–1010.

This legal provision has not remained a dead letter. In fact, the Soviet Union has acceded to a great many international conventions, to which cases the Soviet law relative to the publication of treaties has likewise been made applicable.[41]

Not only does the Soviet practice follow the general custom of international law in concluding treaties and acceding to international conventions, but it recognizes that less important agreements may be effected by a simple exchange of notes. An illustration of this is furnished by the Notes exchanged between the Soviet Union and Austria on April 26, 1927, regarding the registration of trademarks, and those exchanged with Germany on April 17, 1929, regarding tonnage measurements.[42]

Form

The form of treaties is the next problem to be considered. Usually international treaties are written documents, the text of the treaty itself, with due signatures and seals, being known in international law by the technical term "instrument." An examination of Soviet treaties proves that the Soviet authorities have made no new contribution to international law as regards the form of treaties. The preamble, outlines of the general purpose of the treaty and the names of the delegates, the text, signatures and seals, are found in Soviet treaties as in other international treaties. As a typical example of introductory provisions, the following may be quoted:

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"The Russian Socialist Federated Soviet Republics, on the one hand, and the Khorezm People's Soviet Republic, on the other hand, have decided to establish a firm union, and for this purpose to enter into negotiations, and for this end have appointed as their Plenipotentiaries [here follows the list of names] . . . The said Plenipotentiaries, upon mutual presentation of their full powers found in due form and order, have agreed to the following. . . ." [43]

The articles containing the main body of the agreement are followed by provisions relative to ratification, in case such is agreed upon, and by the customary provisions regarding the language of the treaty. The above treaty in its concluding articles reads:

[41] See the list of treaties in Appendix XXIV.

[42] *Sborn. Deistv Dogov*, IV, 1928, p. 56, and VI, 1931, p 146 (CIX, 327, L.N.T.S.), respectively. For others, see Appendix XXIV

[43] *Ibid*, I, 1921, p. 17.

"Art. XXIII. The present treaty shall be ratified.

"Art. XXIV. The present treaty is drawn up in the Russian and Uzbek languages. Both languages are authentic." [44]

As to the language used in treaties, the general rule is that the parties to a treaty select the language or languages in which the treaty is to be drawn. The Latin of the earliest days, the Spanish that followed it, and the French which almost universally succeeded it up to the beginning of the present century, today have given way to the languages of the countries concluding the agreements. This development is particularly noticeable in treaties concluded since the World War, the provision that both or all the languages used are to be authentic being not uncommon. The adherence of the Soviets to this present-day tendency in regard to the language of the treaties has already been illustrated. This practice is not without exception, however, for there are Soviet treaties which are drawn in one language only, and that not the language of either of the parties.[45] Then again there are instances where the treaty is drawn in the languages of the Contracting Parties, but in more than one language and no mention made as to which one should be considered authoritative. Moreover, in the Soviet Official Collection of Treaties, sometimes the Russian text is given without any mention of the language or languages in which the treaty was actually drawn. Such is the case as to the Soviet Treaty with Turkey of December 17, 1925, and the Treaty of Peace with the Democratic Republic of Georgia of May 7, 1920.[46]

Treaties may expire by the lapse of the term for which they are concluded. This period may be specified in the treaty itself, or provision may be made that the basic term be shortened or lengthened at the will of the parties, subject to certain requirements as to notification. Treaties may be suspended, or abrogated, by war. Finally, treaties may be denounced by one of the Contracting Parties, either because the other has failed to carry

[44] *Sborn Deistv Dogov.*, I, 1921, p. 22. The treaties concluded by the U S.S.R., including the very latest, do not deviate from the generally accepted forms of international agreements.

[45] Thus the Customs Convention with Persia of March 10, 1929, is in French, while the Convention with Japan of Jan 20, 1925, is in English.

[46] *Sborn Deistv Dogov*, III, 1926, pp 9–10 and *ibid*, I, 1921, pp 27–33.

out its obligations therein, or, in the case of treaties which have been entered into in reliance upon the continuing existence of the conditions prevailing at the time of the conclusion of the treaty, because these conditions have since changed. This principle, known in international law as *rebus sic stantibus*, may not be expressly incorporated in the text of the treaty, but the question often arises as to whether this condition was not assumed as a basic principle underlying the provisions of the treaty, such that the obligations of the treaty are automatically terminated by the change of circumstances. Although history records several instances of the breach of treaty obligations [47] on this score, there is no adequate theoretic treatment of this principle in international law. Yet it is an indisputable fact that states often undergo such internal, political, social and economic changes that the new conditions may be much stronger than the legal, or even the moral, obligation assumed in treaties. This fact often induces the state to sacrifice compliance with the provisions of the treaties to the changed conditions. The Bolshevist Revolution of 1917, whereby the comparatively conservative government of Kerensky was replaced by the Régime of the Dictatorship of the Proletariat, is a perfect illustration of such a change. The principle of *rebus sic stantibus* was the basis for the following statement contained in the memorandum of the Soviet Delegation submitted at the Genoa Conference on April 20, 1922:

Rebus sic Stantibus

"In refusing to take over the obligations of former governments, or to satisfy the claims of persons who have suffered losses caused by measures of domestic policy, the Soviet Government has so acted not because it was unable or uninclined to fulfill the obligations, but because of matters of principle, and because of political necessity. The Revolution of 1917 completely destroyed all old economic, social and political relations, and by substituting a new society for the old one, in virtue of the sovereignty of a revolting people, has transferred the state authority in Russia to a new [different] social class. By so doing it has severed the continuity of all obligations which were

[47] Russia, in 1870, as to the neutralization of the Black Sea provided by the Pact of Paris of 1856; Austria, in 1908, as to the annexation of Bosnia and Herzegovina; Turkey, in 1913, as to the London Treaty of Peace, Italy, in 1915, by severing its alliance with the Central Powers and entering into war on the side of the Entente; China, in 1914 and 1915, as to the autonomy of Outer Mongolia (Russian-Chinese Treaties of 1913 and 1915)

essential to the economic life of the social class which has disappeared." [48]

Likewise relying on the principle of *rebus sic stantibus*, the Soviet authorities issued a Decree on January 28, 1918, according to paragraph 3 of which all foreign loans were nullified absolutely and without any exception.[49] From the purely juridical point of view, the interest of this decree lies not in the fact of the denunciation of the obligations, but in the reason for refusing to assume the payment of these loans: they were concluded "by the governments of the Russian landlords or of the Russian Bourgeoisie." [50] Similar arguments were set forth in the Decree of the Central Executive Committee of November 13, 1918, denouncing the Brest-Litovsk Treaty:

"The Brest-Litovsk Treaty, a treaty of force and robbery, has fallen under the blow of the united German and Russian Proletarian-Revolutionaries. The toiling masses of Russia . . . freed by the German Revolution from the yoke of this predatory treaty dictated by German militarism, are now called upon to decide their own fate." [51]

These illustrations show that under the principle *rebus sic stantibus* the Soviet authorities consider their social revolution as sufficiet justification for denouncing the treaties entered into by the previous régimes in Russia.

The first act of the Soviet Government towards the materialization of this theory was the Decree approved on October 28, 1917, by the Second All-Russian Congress of Soviets, according to which all old imperial secret treaties were denounced.[52] The significance of this decree from the legal point of view is three-fold. Firstly, by declaring null and void all secret treaties concluded by the Imperial Russian Government the Soviet authorities thought to give to the new Soviet Government complete freedom of action as regarded international obligations, without the necessity of applying the principle of state succession. Secondly, by denouncing any form of secret diplomacy, and by declaring its

[48] *Cf* Arts. 9 and 19 of the Covenant of the League of Nations, by which the League has the right to examine the treaties registered with it from the point of view of their conformity with the principle of *rebus sic stantibus*
[49] *Sobr Uzak. i Rasp. R.S.F.S.R.*, 1917–1918, p 344.
[50] *Ibid*, 1917–1918, pp. 344–345.
[51] *Sovetskii Soiuz v Bor'be za Mir*, pp. 56ff.
[52] *Sobr Uzak i Rasp. R.S.F.S.R*, 1917–1918, p. 3.

intention to conclude a peace without annexations and indemnities, the Soviet Government initiated its policy of political "altruism" and of "open" diplomacy, condemning secrecy in regard to treaties. Thirdly, this decree, which unilaterally denounced a whole complex of treaty obligations, is a most drastic example of the termination of international treaties by one of the parties, justifying itself by the obvious difference between the old and the new social order.

Earliest Soviet Treaties

The first treaty concluded by the Soviets was the Treaty of Peace signed at Brest-Litovsk on March 3, 1918 In spite of its great historical rôle, the legal importance of this treaty from the theoretical point of view is insignificant Not only was it very short-lived, but its provisions were forced upon Russia by taking advantage of her weakened condition, and did not differ essentially from the general type of peace treaties concluded by victorious imperialistic governments As such this treaty hardly affords a satisfactory illustration of the novel ideas which the communists later introduced into their international agreements. The preliminary discussions regarding self-determination, annexation, indemnities, etc., which were carried on by the German and Soviet delegations, and which revealed the difference between the interpretation of these terms by the communists and their antagonists, unfortunately do not survive in the treaty itself. The only suggestive new terms found in this treaty are the provisions of Articles 2 and 6 forbidding any agitation or propaganda for political purposes [51]

Brest-Litovsk Treaty

Agreement with Roumania

The Agreement between the R S.F S.R. and Roumania, signed at Jassy on March 5, 1918, and at Odessa on March 9, 1918, is characterized by the same lack of novel provisions. Containing only nine brief articles, this instrument attempted to settle beforehand all the most important issues of a political, military and commercial nature which at that time appeared unavoidable between these two states. The summary treatment of such a multiplicity of subjects is evidence that the treaty was forced upon the Soviets at a time when they were ready to accept almost anything in order that the government of the newly established

[51] *Text of the Russian "Peace."* (Confidential. For official use only Washington, Government Printing Office, 1918)

Régime might secure peace with outside countries, and concentrate on the settlement of the domestic difficulties caused by the so-called counter-revolution.[54]

All subsequent Soviet treaties may be divided into two main classes. To one belong treaties concluded prior to *de jure* recognition of the Soviet Government; to the other those entered into by the Soviets after this recognition was accorded them. In its turn, the first group may be divided into the following categories. (1) Treaties concluded among the Soviet Republics prior to the formation of the Union, (2) Treaties of peace with the Baltic States, Finland and Poland, (3) Agreements with other Powers on repatriation, (4) Treaties with the countries in the Near East and the Orient, and (5) Treaties concluded with the Western European Powers after the Civil War in Russia was over.

reaties rior to *de ure* Recog- ition

Treaties concluded among the separate Soviet republics prior to the formation of the Soviet Union are not numerous.[55] While similar to other treaties in external form, they differ essentially in the fundamental principles upon which they are based. They do not reflect any disparity of power between the Contracting Parties, for the latter were all communist states with no reason for national rivalry or political competition. In their joint struggle for world revolution, they were equal to each other. Interested in the welfare of the proletariat as they all were, they had a common aim—the suppression of capitalism.

mong Soviet epublics

As an illustration, the Preamble of the Treaty between the R.S.F.S.R. and the Azerbeidzhan S.S.R. of September 30, 1920, is pertinent:

"The Governments of the Azerbeidzhan S.S.R. and of the R.S.F.S.R. . . . admitting the depth of the common interest of the toiling masses of Azarbeidzhan and Russia, and taking into consideration that only the complete unification of all the forces of both these brotherly Republics can guarantee success in the difficult struggle against the common enemy—the imperialistic bourgeoisie—have decided to conclude this treaty. . . ." [56]

[54] *Sborn. Deistv. Dogov.*, I, 1921, pp. 74–75. Full text in Appendix XIII. Article 1 is of interest from the political point of view.
[55] See Appendix XXIV.
[56] *Sborn. Deistv. Dogov*, I, 1922, p. 1.

A Treaty of Economic Union between the R.S.F.S.R. and the Far-Eastern Republic (D.V.R.) was signed at Moscow on February 17, 1922, on the basis of "a common viewpoint on the necessity of protecting the interests of the working masses" [57] The treaties of the R.S.F.S.R. with the White-Russian S.S.R. of January 16, 1920, and with the Ukrainian S.S.R. of December 28, 1920, were based on the "necessity of combining forces for self-protection." [58] In a word, the treaties concluded among the Soviet republics which were to become members of the Union in 1923, although technically international, actually are more important in their constitutional than their international aspects.

Treaties of Peace with Baltic States

The second group of Soviet treaties comprises Treaties of Peace with the so-called Limatroph States, *i.e.*, Estonia, Latvia and Lithuania, and with Finland and Poland The first of these, and at the same time typical of all of them, was that with Estonia of February 2, 1920. Besides the issues usually dealt with in peace treaties, such as boundaries, war prisoners, indemnities, amnesty and the like, there are three outstanding characteristics of this treaty: Firstly, it recognized the complete independence of Estonia—a practical application of the communist theory of the right of national self-determination, including separation from the mother country. To quote Article 2.

"On the basis of the right of all peoples freely to decide their own destinies, and even to separate themselves completely from the State of which they form part, a right proclaimed by the Federal Socialist Republic of Soviet Russia, Russia unreservedly recognizes the independence and autonomy of the State of Esthonia, and renounces voluntarily and forever all rights of sovereignty formerly held by Russia over the Esthonian people and territory by virtue of the former legal situation, and by virtue of international treaties, which, in respect to such rights, shall henceforth lose their force." [59]

Secondly, it relieved Estonia from the obligation of assuming its normal share of the debts of the parent state in accordance with the principles governing state succession. In this the Soviets

[57] *Sborn. Deistv. Dogov*, III, 1922, p. 23.
[58] *Ibid*, I, 1922, pp. 13 and 15, respectively.
[59] *Ibid*, I, 1924, p. 195; XI, 30, L N T S By a later Governmental Decree of the Estonian Republic, the official spelling omits the letter "h" from the name.

again applied their abstract theories contrary to their own practical interests.

"Esthonia shall bear no part in the responsibility for the debts or any other obligations of Russia, and particularly for those arising from the issue of paper currency, treasury bonds, debentures, foreign or internal loans, the guaranteeing of loans issued by various concerns or enterprises, etc.: all claims of the creditors of Russia for debts relating to Esthonia shall be brought against Russia exclusively." [60]

Thirdly, it pledged the mutual non-interference of the Contracting Parties in each other's political life. It contained a provision mutually forbidding

". . . the formation, and the presence in their territory of any organizations or groups whatsoever claiming to govern all or part of the territory of the other Contracting Party, and the presence of representatives or officials of organizations or groups whose object is to overthrow the Government of the other Party to the Treaty." [61]

The Treaties of Peace with Latvia, Lithuania, Finland and Poland contain like provisions regarding political matters, and require no separate analysis. The Treaty of Peace with Poland, of March 18, 1921, however, stands out by its provision relative to the rights of national minorities:

"Russia and the Ukraine undertake that persons of Polish nationality in Russia, the Ukraine and White Ruthenia, shall in conformity with the principles of the equality of peoples, enjoy full guarantees of free intellectual development, the use of their national language and the exercise of their religion. Poland undertakes to recognize the same rights in the case of persons of Russian, Ukrainian and White Ruthenian nationality in Poland. Persons of Polish nationality in Russia, the Ukraine and White Ruthenia shall so far as is in conformity with the domestic legislation of these countries have the right to make full use of their own language, to organize and maintain their own system of education, to develop their intellectual activities and to establish associations and societies for this purpose; persons of Russian, Ukrainian and White Ruthenian nationality in Poland shall enjoy the same rights, so far as is in conformity with the domestic legislation of Poland." [62]

[60] Art. 12, clause 2 (*Sborn. Deistv. Dogov*, I, 1924, p. 202).
[61] Art 7 (*ibid*, I, 1924, p 199).
[62] Art. 7 (*ibid*, I, 1924, p. 128).

Agreements on Repatriation

The first treaties concluded by the Soviet Government with strictly foreign states were those entered into with Western European powers for the mutual repatriation of their respective citizens. The Soviet Government neither attempted to make the repatriation dependent upon the granting of *de jure* recognition, nor claimed that the mere fact of entering into these treaties amounted to such recognition of their government by the other parties thereto. These agreements on repatriation may be divided into two groups: those supplementary to the treaties of peace, and those concluded independently thereof. From the legal point of view the latter are the more interesting. They illustrate the legal minimum necessary for a technical agreement between two governments, one of which has not been recognized *de jure* by the other. The agreement with Austria signed on July 5, 1920, consisted of but two paragraphs, the first providing for the mutual repatriation of war prisoners, the second for the establishment of special repatriation commissions enjoying the right of extraterritoriality.[63] Similar to this in its content and brevity was the Agreement between the R.S.F.S.R. and Denmark on the same matter, signed on December 18, 1919.[64] The Agreement with Belgium of April 20, 1920, was still shorter.[65] The conventions on repatriation with England and France afford little of interest, with the exception of the provisions relative to processes against their respective citizens pending in Soviet courts.[66] Mention must be made also of the Agreement signed with Hungary on July 28, 1920. A peculiar provision therein reads in part as follows:

". . . the Contracting Parties agree *not to take any military action* against each other . . . *in a civil war*, and not to assist the enemies of the other [Contracting Party] either directly or indirectly."[67]

Another unusual feature, of a purely technical nature, is the wording of Article 6, according to which war prisoners are divided

[63] *Sborn. Deistv. Dogov.*, I, 1922, pp. 117, 118.
[64] *Ibid*, I, 1922, p. 139.
[65] *Ibid*, I, 1922, p. 119.
[66] Clause 2 of Art. 2 of the Agreement with France of Apr 20, 1920, and Art 2 of the Agreement with Great Britain of Feb 12, 1920 (*ibid*, I, 1922, pp. 120 and 157, respectively).
[67] *Ibid*, I, 1924, p. 220 (Italics by author)

into two categories: enlisted men—the proletarians, and officers—the bourgeoisie.[68] This is evidence of a quite unusual acceptance by a bourgeois state in an international agreement of the terminology, if not the ideology, of the philosophy of Karl Marx.[69]

Treaties with Eastern Countries

The attempts of the Soviet Government to secure closer coöperation with the peoples in the Near East and Orient were materialized in treaties in 1921. Of these the most important were those with Persia of February 26, 1921, with Afghanistan of February 28, 1921, with Turkey of March 16, 1921, and with Mongolia of November 5, 1921.[70]

Similar in their content and nature, they may be analyzed summarily from two aspects, political and economic. A typical provision of a political nature is to the effect that the

". . . High Contracting Parties agree upon freedom for the nations of the East on the basis of independence [*sic*] and in conformity with the common desire of their peoples." [71]

The introductory paragraph of the Treaty with Turkey reads in part:

"The Government of the Russian Socialist Federated Soviet Republic and the Government of the Great National Assembly of Turkey, agreeing upon the principle of the brotherhood of nations and upon the right of peoples to self-determination, and emphasizing the solidarity existing between them in their struggle against imperialism, as well as making note of the fact that every difficulty created for one of the two peoples make conditions worse for the other, and wholly animated by the desire to establish between them permanent amicable relations and eternal sincere friendship based upon the mutual interests of both parties, have decided to conclude this treaty of friendship and brotherhood." [72]

In conformity with the communist attitude of opposition to the policies of all former Russian Governments,[73] these treaties pro-

[68] *Sborn. Deistv Dogov.*, I, 1924, p. 221
[69] Korovin, *as cited*, p. 79.
[70] *Sborn Deistv. Dogov*, I, 1924, pp 148 (IX, 384, L.N.T.S.), 40, 155 and 114, respectively. The Treaties with Bukhara and Khorezm fall within the group of treaties among the Soviet Republics, as both these were Soviet Republics and became member states of the Soviet Union.
[71] Art. 7 of the Treaty with Afghanistan (*Sborn. Deistv. Dogov*, II, 1921, p. 16.)
[72] *Ibid*, I, 1924, p. 155.
[73] Art. 2 of the Treaty with Persia (*ibid.*, I, 1924, p. 148; IX, 384, L.N.T.S.).

vide for the restoration of national geographic boundaries, and for the nullification of privileges formerly enjoyed by Imperial Russia in the Near Eastern States.[74] Of peculiar interest in this respect is the provision of Article 8 of the Treaty with Mongolia:

"The judicial authority of each of the Contracting Parties shall extend in civil as well as in criminal cases within their [respective] territories to the nationals of the other Contracting Party, and at the same time the [Contracting] Parties, animated by high principles of civilization and humanity, renounce the application by judicial, investigatory or any other organs of any punitive measures causing physical suffering or lowering the moral faculties of man." [75]

Article 7 of the Treaty with Turkey terminating the régime of capitulations declares that all rights based upon this *régime* are abrogated.[76]

So much for the political aspect of these treaties. From the economic point of view their contribution is meager. Most-favored-nation treatment is provided for in Article 11 of the Treaty with Turkey:

"Both the Contracting Parties agree to apply the principle of the most-favored-nation to the nationals of each Contracting Party resident in the territory of the other Party." [77]

The economic clauses of the Treaty with Persia are very similar. The principle of the most-favored-nation is also found in the Treaty with Mongolia. Whereas the Treaty with Afghanistan has no provision for most-favored-nation treatment, the Soviets offered freedom of transit and trade, and financial and other assistance to promote in establishing friendly relations. To summarize: politically, these treaties aim to secure new associates in the communist struggle against capitalist imperialism. Economically, they manifest a reliance upon the most-favored-nation principle as an important means to attain this end. Neither in their principles nor in their formal technicalities do they afford anything new in legal interest.

[74] Art 12 of the Treaty with Persia (*Sborn. Deistv Dogov.*, I, 1924, p. 151; IX, 384, L.N.T.S.).
[75] *Ibid*, I, 1924, p. 115.
[76] *Ibid*, I, 1924, p. 157
[77] *Ibid.*, I, 1924, p. 157.

Treaties with Western Powers after the Civil War

To the last group of treaties entered into by the Soviets before acquiring *de jure* recognition belong those concluded after the end of the Civil War that followed the November Revolution. It was during this period that the Soviet Government began to launch its attempts to establish economic relations with foreign states of the West by entering into special agreements with them. Officially most of these treaties are called Treaties of Commerce, although they include provisions which are distinctly political or legal in their character.[78] They are interesting primarily for their application of the most-favored-nation principle in all its classical variations.

The earliest agreement of this group was the Economic Agreement between the R.S.F.S.R. and Great Britain of March 16, 1921. The Introductory Articles stated that each Contracting Party should refrain from hostile actions and from fostering political propaganda against the other party outside its own borders, emphasizing particularly that the Russian Soviet Government was to refrain from such activities among the peoples of Asia, and the British Government, in regard to the countries which had formerly been part of the Russian Empire. According to Article 1 both parties agreed not to

". . . place conditions upon the trade [between them] which would be more onerous than those imposed upon the trade with other countries," [79]

maintain any form of blockade against each other, or permit any obstacle in the way of the resumption of trade between them. Furthermore, no discrimination was to be shown against their trade as compared with that carried on with any other foreign country. Article 2 secures to the ships of both countries the privileges, facilities, immunities and protection which are usually accorded to foreign ships by the established practice of commercial nations. Article 5 provides that each Contracting Party may appoint one or more official agents, to whom are accorded privileges approximating diplomatic immunities.[80] In brief this

[78] Korovin, *Mezhdunarodnoe Pravo Perekhodnogo Vremeni*, 2-e izd., p. 79.
[79] *Sborn. Deistv. Dogov*, II, 1921, pp. 18–24; IV, 128, L.N.T.S.
[80] *Ibid*, II, 1921, pp. 18–24; IV, 128, L.N.T.S.

agreement regulates the economic relations between Great Britain and the R.S.F.S.R., emphasizing the well-known formula of the most-favored-nation.

Not very different as to its content or form is the Provisional Agreement with Germany of May 6, 1921. According to Article 8,

"Russian nationals at present in Germany are to be dealt with, as regards their persons and property, in accordance with international law and German laws in general" [81]

Vessels of one of the Contracting Parties were to be treated in the territorial waters of the other in accordance with the rules of international law (Art. 10). Other articles dealt with the organization of the necessary trade agencies, and their functions and rights. Property of the Russian Government in Germany, both diplomatic and commercial, was to enjoy protection in accordance with international law (Art. 13), while the representatives of both parties, and persons employed by them, were to confine their activities strictly to their business. Article 15 reads in part:

". . . it shall be specially encumbent on them to refrain from any agitation or propaganda against the government or the institutions of the state in which they are resident." [82]

Much more far-reaching is the next Agreement with Germany, signed at Rapallo on April 16, 1922. In Article 1, Germany agreed to waive all claims

"for compensation for expenditure incurred on account of the war, and also for war damages, that is to say, any damage which may have been suffered by them and by their nationals in war zones on account of military measures, including all requisitions in enemy country. Both Parties likewise agree to forego compensation for any civilian damages which may have been suffered by the nationals of the one Party on account of so-called exceptional war measures or on account of emergency measures carried out by the other Party."

In Article 2, Germany waived all claims against the Soviet Government arising from the application of Soviet laws to

[81] *Sborn Deistv Dogov*, II, 1921, pp 25–26; VI, 268, L.N.T.S
[82] *Ibid*, II, 1921, pp 24–28; VI, 268, L.N.T.S.

German nationals in Russia, on condition that the Soviet Government should not satisfy similar claims for compensation put forward by other states. They agreed to resume diplomatic and consular relations immediately (Art. 3); the status of the nationals of one Party, living within the territory of the other, was to be defined, and mutual commercial and economic relations carried out on the basis of the most-favored-nation principle, except that the latter was not to be invoked as to privileges which the R.S.F.S.R. might extend to states which had formerly been part of the Russian Empire.[83]

The Treaty of December 7, 1921 with Austria in most of its provisions is copied from the Soviet-German Agreement of May 6, 1921. The Provisional Agreement with Norway, of September 2, 1921, is very similar to those with Great Britain of March 16, 1921, and with Italy of December 26, 1921.[84] The Provisional Agreement with Sweden, of March 1, 1922, closely followed the provisions of the aforementioned treaties with Great Britain and Norway. While never ratified, its provisions became operative in the form of a new Treaty of Commerce of March 15, 1924.[85]

Other treaties of this period concluded with Western European states are a Provisional Treaty with Czechoslovakia, of June 5, 1922, and an Agreement with Denmark, of April 23, 1923. Article 1 of the former recognizes the Representative Plenipotentiary as "the sole representative of the respective state in the other country," and at the same time leaves the problem of *de jure* recognition "undetermined by the present agreement." [86] A characteristic of the Agreement with Denmark is that

"Denmark shall not be entitled to claim the special rights and privileges accorded by Russia to a country which has recognized or may recognize Russia *de jure*, unless Denmark is willing to accord to Russia compensation similar to that accorded by the country in question . . ." (Art. 2) [87]

[83] *Sborn Deistv. Dogov*, I, 1924, pp 58, 59; XIX, 248, L.N.T.S.
[84] *Ibid.*, I, 1924, pp. 35–39, 117–120, and 69–75, respectively; VII, 294, L.N.T.S. and IV, 128, L.N.T.S. for Agreements with Norway and Great Britain, respectively).
[85] *Ibid*, II, 1925, pp. 68–71, XXV, 252, L.N.T.S.
[86] *Ibid*, I, 1924, p. 189.
[87] *Ibid*, I–II, 1928, p. 20, XVIII, 16, L.N.T.S.

When later, on June 18, 1924, Denmark accorded *de jure* recognition to the government of the U.S.S.R., the latter granted to Denmark the régime of the most-favored of the nations which had not accorded it *de jure* recognition prior to February 14, 1924.[88]

The Treaties of Peace between the R.S.F.S.R. and the newly formed Baltic states have been analyzed above as treaties concluded with new states formed from territory formerly a part of the Russian Empire. Aside from their political significance, however, they contain economic provisions of importance, which may properly be analyzed here. These are found in clauses relative to the application of the principle of the most-favored-nation in a variation which may be called "conditional." Whenever most-favored-nation treatment is accorded in these treaties, care must be taken to distinguish between the most-favored nation among the Baltic States and the most-favored nation among all the states with which the Soviets have concluded economic treaties. Article 13 of the Treaty with Estonia provides:

"Russia declares that the exemptions, rights and privileges granted to Esthonia and to her citizens by the present Treaty shall in no case, and under no circumstances, constitute a precedent when Peace Treaties are concluded between Russia and the other States formed from the late Russian Empire; if, however, in concluding such treaties, Russia grants to *any one of these new States or to its subjects* any exemptions, rights or private privileges, these shall be fully extended immediately and without any special agreement to Esthonia and her subjects." [89]

This reference to states formed from the Russian Empire undoubtedly betokens a limitation upon the most-favored-nation principle. On the other hand, Articles 12 and 16 provide that the principle was to be applied without these restrictions:

"Art. 12 . . . (3) As regards the redemption of Russian State bonds . . . and also as regards the satisfaction of the claims of Esthonian subjects against the Russian Treasury, Russia shall be obliged to grant to Esthonia and Esthonian citizens all the exemption from taxation, rights and privileges which she has directly or indirectly

[88] *Sborn. Deistv. Dogov*, II, 1925, p. 13
[89] *Ibid.*, I, 1924, p 203; XI, 30, L N T S. (Italics by author)

offered, or may offer, to *any foreign state or to the subjects*, companies or enterprises of such state." [90]

"Art. 16 (*a*) . . . [2] The 'most-favored-nation' treatment shall be granted, in the territory of each Party, to citizens, to commercial, industrial, and financial enterprises and companies, to ships and their cargoes. . . ." [91]

The Treaty of Peace with Latvia is similar to that with Estonia as regards the most-favored-nation clause, with the exception that here, according to Article 17, provision was made for the application of the principle only until the conclusion of a Treaty of Commerce and Transit, in which it was not necessarily to be incorporated. In the Treaty with Lithuania, the limitation of the most-favored-nation treatment to the most-favored Baltic State is replaced by the most-favored among the states members of a joint union with the R.S.F.S.R.:

"Art. 16. The Contracting Parties, however, shall not have any claims to preferential rights which one of them may grant to a third country with which it is a joint member in a customs union, or any other union." [92]

In the Treaty of Peace with Poland, the principle was embodied in Article 20, which read in part:

"In accordance with the principle of the most-favored-nation, Russia and the Ukraine recognize, automatically and without a special convention, the claims of Poland, and Polish nationals and juristic persons to all such rights, privileges and similar benefits, with regard to the restitution of property and compensation for damages . . . which shall be extended *to a third country*, its citizens and juridical persons. . . ." [93]

The Peace Treaty with Finland reproduces in general the provisions of Articles 2 and 16 of the Treaty with Estonia.

[90] *Sborn Deistv. Dogov.*, I, 1924, p 203; XI, 30, L N T S
[91] *Ibid*, I, 1924, p. 203; XI, 30, L N T S
[92] *Ibid*, I, 1924, p. 105; II, 196, L.N.T S
[93] *Ibid*, I, 1924, p. 137; VI, 52, L.N T S. This "most-favored-nation clause" was included in conformity with the provision of Art 9 of the Preliminary Agreement of Oct 12, 1920, which provided that Russia and the Ukraine were to accord most-favored-nation treatment to Poland in respect to the restitution of property and the compensation of Poland and Polish nationals for losses incurred during the Revolution and the Civil War. An additional clause stipulated that this provision should be included in the Treaty of Peace to be signed later (*ibid*, I, 1922, p. 68). (Italics by author.)

Moreover, in a special article, providing for the rafting of forest products along the waterways running from the territory of one of the Contracting Parties into the territory of the other, there is a specific reference to the most-favored-nation principle:

"Art 21. Similarly, and especially in regard to rafting, the agreement shall extend to the nationals of the two Contracting Powers the *same rights as are accorded to the most-favored raftsmen*" [94]

Thus, while the Treaties of Peace with Estonia and Latvia contain provisions both for a restricted and a general application of the most-favored-nation principle, those with Lithuania, Poland and Finland apply the principle only in a general sense. While in the former two the application of this principle was made more advantageous to the R S.F.S.R by limiting the privileges granted to the Baltic States thereunder, the last three treaties provide for a much broader application of the principle.

To summarize, the political and economic aspects of the treaties concluded by the Soviets after the Civil War, prior to *de jure* recognition, offer little new for students of international law It should be noted, however, that the conclusion of a treaty is expressly deemed to be compatible with abstention from the according of recognition *de jure*. The idea of granting privileges on the basis of the most-favored-nation principle is not new, although the extent to which it was resorted to by the Soviet Government was unusual and is explained by the need of protecting itself from being enslaved by foreign capital.

Apart from all these groups stand the agreements concluded for the purpose of securing foreign assistance for the areas affected by famine in 1921. These agreements were concluded not with the governments of foreign states, but with foreign philanthropic organizations, such as the American Relief Association, headed by Mr. Hoover, Nansen's Committee, and the Red Cross organizations of Germany and other countries. The chief problems touched upon in these agreements were the method of admitting the representatives of these organizations into the R.S.F.S.R., their freedom of movement, the conditions of their

[94] *Sborn Deistv. Dogov*, I, 1924, p 178; III, 6, L N T S (Italics by author)

activity there, the guaranties of the inviolability of their person and of their offices and supplies, etc.

Of these "Philanthropic Agreements" the most interesting is that concluded with the American Relief Association.[95] In order to make the work of the Relief Association more effective, it was made independent of the Soviet authorities. To prevent any possible encroachment upon the sovereignty of the Soviet State, however, as the result of the very extensive rights of extra-territoriality given to the members of the Association, a number of Soviet officials were appointed officially "to assist" the Association in its work, and at the same time to protect the interests of the Soviet Government. Besides, several interdepartmental meetings were held, and a number of Russian-American Mixed Commissions were formed. Temporary in character and limited in their purpose, these agreements are nevertheless interesting from the legal point of view. Apart from showing that the Soviet Government was desirous of having the sovereignty of the Soviet State properly protected, they furnished rare illustrations of international agreements concluded between entities other than sovereign states with recognized governments. They betoken that the government with which the negotiations were entered into was admitted by foreign states to have the requisite authority, despite the fact that no *de jure* recognition had been accorded. Finally, they serve as an additional illustration that the Soviets are aware of the meaning of diplomatic privileges.[96]

reaties ubsequent de jure ecognition

Recognition of the Soviet Government *de jure* began on February 1, 1924, when such recognition was accorded by Great Britain. Other countries followed suit in rapid succession, and by the beginning of 1925 all the Great Powers with the exception of the United States had established diplomatic relations with the Soviet Union.[97] Thereupon many treaties were entered into,

[95] *Sborn Deistv. Dogov*, II, 1921, pp. 152–155. A list of the others will be found in Appendix XXIV.

[96] See Korovin, "Inostrannaia filantropicheskaia deiatel'nost' v R.S.F.S.R.," *Sovetskoe Pravo*, 1922, I, pp 108–118.

[97] All the recognitions were accorded in 1924, in the following order Great Britain, Feb. 1; Italy, Feb. 7; Norway, Feb. 13; Austria, Feb. 20; Greece, Mar. 8; Danzig, Mar. 13; Sweden, Mar. 15; Denmark, June 18; Hungary, Sept 18; France, Oct. 28; and Japan, Jan 1, 1925. (The Japanese recognition was delayed by a claim to compensation for the massacre of Japanese nationals by Red soldiers in Novo-Nikolaevsk, in May, 1920)

to the end of insuring closer political and economic coöperation between the communist and non-communist world. Neither as to the principles involved nor as to the terms in which they were drafted did these treaties vary essentially from those concluded after the war by many other states.

These treaties may be divided into the following general groups: political, economic, juridical, and what may be called "social and humanitarian."[98] Among the political treaties are classed those concerning states principally as sovereign entities. Foremost among these are treaties of peace recognizing the sovereign existence of other states and containing provisions relative to cession of territory, the establishment of frontiers, delimitation of spheres of interest, etc. Illustrations of this type have been afforded by the earlier treaties of the Soviet Régime.[99] To this group belong also treaties of union and friendship, and of neutrality and non-aggression. While there has never been a technical definition of the term "friendship" as applied to international agreements, such treaties in fact contain provisions aiming to insure the maintenance of comity, similar to those found in treaties of peace. The latter are chiefly agreements declaratory of the state's right to independence, and envisaging the defense of its territory, the insurance of its inviolability, and the free development of its state system.

Political

While treaties of peace and friendship had been entered into by the Soviets long before the formation of the Union, and were both numerous and typical of treaties of this kind, the earliest Soviet treaty of neutrality and non-aggression was that between the U.S.S.R. and Turkey of December 17, 1925. It was followed by a series of similar treaties concluded with Germany on April 24, 1926, with Afghanistan on August 31, 1926 and on June 24, 1931, with Lithuania on September 28, 1926, with Persia on October 1, 1927,[100] and with Yemen on November 1, 1928.

[98] In the Soviet Official Collection of Treaties the treaties are classified as follows: (1) Political treaties and treaties on the establishment of diplomatic relations, (2) Agreements of a juridical character, (3) Agreements on boundaries, (4) Economic Agreements, (5) Agreements on communications, (6) Agreements on transportation and (7) Agreements concerning protection of public health.

[99] *Cf* the Treaty of Brest-Litovsk of 1918 and the Treaties of Peace with the Baltic States, Finland and Poland (see Appendix XXIV)

[100] Given as illustration in Appendix XVIII

More recently the U.S.S.R. has entered into similar agreements with Estonia, Latvia, Finland, Poland and France.[101] "Neutrality" is well understood as "the relation which exists between states which take no part in the war, and the belligerents." [102] Typical of such provisions are Articles 2 and 3 of the Treaty with Germany:

"2. Should one of the Contracting Parties, despite its peaceful attitude, be attacked by one or more third Powers, the other Contracting Party shall observe neutrality for the whole duration of the conflict.

"3. If on the occasion of a conflict of the nature mentioned in Art. 2, or at a time when neither of the Contracting Parties is engaged in warlike operations, a coalition is formed between third Powers with a view to the economic or financial boycott of either of the Contracting Parties, the other Contracting Party undertakes not to adhere to such coalition." [103]

Soviet recognition of the principle of non-aggression is apparent from the provisions of Article 1 of the Treaty of Non-Aggression and Peaceful Settlement of Disputes, concluded with Estonia on May 4, 1932. Each of the Parties

"guarantees to the other Party the inviolability of the existing frontiers between them, as defined by the Peace Treaty signed on February 2, 1920, and undertakes to refrain from any act of aggression or any violent measures directed against the integrity and inviolability of the territory, or against the political independence, of the other Contracting Party, whether such acts of aggression or such violent measures are undertaken separately, or in conjunction with other Powers, with or without a declaration of war." [104]

[101] Treaty of Non-Aggression and Peaceful Settlement of Disputes with Estonia of May 4, 1932, similar Treaty with Finland of January 21, 1932; similar Treaty with France of November 29, 1932; similar Treaty with Latvia of February 5, 1932; and the Treaty of Non-Aggression with Poland of July 25, 1932 (*Sobr. Zak. i Rasp S.S.S.R.*, 1932, II, pp. 325, 319, 63, 308, and *ibid.*, 1933, II, p. 41).

[102] *The Three Friends*, 166 U.S. 1, 52.

[103] *Sborn Deistv. Dogov.*, IV, 1928, p. 16; XLIII, 387, L.N.T.S. *Cf.* earlier treaties on the neutralization (inviolability) and demilitarization of certain areas, both land and water. Art. 5 of the Treaty of Peace with Estonia of 1920 provided that "in case of international recognition of the permanent neutrality of Estonia, Russia shall recognize such neutrality and will take part in guaranteeing the maintenance of this neutrality." (*Sborn. Deistv. Dogov.*, I–II, 1928, pp. 153ff.; XI, 30, L.N.T.S.) Arts. 12 and 16 of the Treaty with Finland of 1920 recognize in principle the neutralization of the Gulf of Finland and of the Baltic Sea. (*Ibid.*, I, 1924, p. 176.)

[104] *Cf.* the provisions of the corresponding articles in similar treaties with Finland, France and Latvia.

There are also provisions to the effect that should one of the contracting parties attack a third Power, the other contracting party will be entitled to denounce the treaty without previous notice.[105]

It is only recently that attempts have been made to formulate a definition of "non-aggression." Of interest in this connection are three conventions entered into by the U.S.S.R.: that between Afghanistan, Estonia, Latvia, Persia, Poland, Roumania, Turkey, and the U.S.S.R., signed in London, July 3, 1933; the Convention Defining Aggression, between Czechoslovakia, Roumania, Turkey, Yugoslavia, and the U.S.S.R., signed in London, July 4, 1933; and a similar Convention between Lithuania and the U.S.S.R., signed in London the following day.[106]

According to Article II of the first of these,

" . . as the aggressor in an international conflict, with due consideration of the agreements existing between the parties involved in the conflict, will be considered the state which is the first to commit any of the following acts:

"1. Declaration of war against another state;

"2. Invasion by armed forces, even without declaration of war, of the territory of another state;

"3. An attack by armed land, naval, or air forces, even without a declaration of war, upon the territory, naval vessels, or air craft of another state;

"4. Naval blockade of the coasts or ports of another state;

"5. Aid to armed bands formed on the territory of a state and invading the territory of another state; or refusal, despite demands on the part of the state subjected to attack, to take all possible measures on its own territory to deprive the said bands of any aid and protection."

As political must also be classed diplomatic and consular treaties. Soviet treaties concluded on this subject have already been discussed, notably the Consular Treaties with Germany of October 12, 1925, and Poland of July 18, 1924;[107] the Convention between the U.S.S.R. and Sweden of October 8, 1927, on the

[105] Art. 6 and Art. 2 of the Treaties with Estonia and Finland, respectively.

[106] *Sobr. Zak. i Rasp. S.S.S.R.*, 1933, II, pp. 155–161; also, *A.J.I.L.*, XXVII, 1933, pp. 192ff.

[107] *Sborn. Deistv. Dogov.*, III, 1927, pp. 19ff and 38ff., respectively. *Cf.* also Notes exchanged with Sweden on Feb. 2, 1927 (*ibid.*, III, 1927, p. 33, LIII, 163, L.N.T.S., and XLIX, 201, L.N.T.S.).

legal status of Trade Delegations, and the Protocol with Lithuania of August 29, 1931.[108]

Here too belong treaties and agreements for the settlement of disputes between states. These may be divided into two groups: those concerning disputes of a local character, such as frequently arise in the frontier zones, and those providing for methods of settling disputes in general. The Soviet Union has entered into both kinds of agreements. Among the former are the Agreements with Poland of August 3, 1925, with Latvia of July 19, 1926, with Estonia of August 8, 1927, with Turkey of August 6, 1928, with Finland of September 24, 1928, and with Roumania of November 20, 23.[109] Most of these instruments provide that minor conflicts which may arise in the frontier zones are to be settled by mutual agreement between the respective sectional frontier authorities, for which purpose the frontiers are divided into a number of sections. In case of disagreement, the issue is to be submitted to the respective governments. Previously such conflicts had been settled through diplomatic channels. To quote, as an illustration, Article 1 of the Agreement with Turkey of August 6, 1928:

"All minor incidents and disputes in the frontier zone that may arise after the coming into force of this Convention, shall be settled by local organs and in the way prescribed in Arts. 3–14 of this convention.

"Note: All incidents and disputes which arose prior to the coming into force of this Convention shall be settled through diplomatic channels. . . ."[110]

The agreement is thus not retroactive.

Among the agreements providing methods for the settlement of disputes in general are the Conciliation Conventions with Germany of January 25, 1929, and the Extension Protocol of June 24, 1931; with Estonia of June 16, 1932; with France of

[108] *Sborn. Deistv Dogov*, V, 1920, pp. 85ff. For the full text, see Appendix XXII

[109] *Ibid.*, II, 1927, p 70; IV, 1928, p. 38; IV, 1928, p. 49; VI, 1931, p. 29; V, 1930, p 38; and I–II, 1928, p. 191, respectively (LIV, 155, L.N.T.S.; XLXX, 401, L N T.S.; and LXXXII, 63, L N T S, for Agreements with Latvia, Estonia, and Finland, respectively.) See Appendix XXIV.

[110] *Ibid*, VI, 1931, pp. 29ff.

November 29, 1932; with Poland of November 23, 1932; and the Protocol with Great Britain of October 3, 1929.[111]

To quote Article 1 of the Convention with Germany of January 25, 1929:

"Disputes of every kind, more particularly differences of opinion arising out of the interpretation of bilateral treaties existing between the two Contracting Parties, or of agreements concluded, or to be concluded for the interpretation and execution of the said treaties shall, if difficulties are encountered in settling them through the diplomatic channels, be submitted to a procedure of conciliation in accordance with the following provisions." [112]

For the purpose of reaching these agreements, Special Conciliation Commissions were to be appointed by each Party. While in general all these conventions are similar to each other, the one with France states that to the Conciliation Commissions are submitted "all disputes of whatever nature," and in the Convention with Poland it is stipulated that "the provisions of the present convention do not apply to territorial matters." [113]

Finally to the political treaties belong international agreements for limitation of armaments and common action against states which unlawfully break the peace, *i.e.* the Covenant of the League of Nations, the Washington Treaties of 1922, the Geneva Protocol of 1924, and the Locarno Treaty of 1925, and those regulating methods of warfare, although the latter may also be considered as humanitarian. The Soviet attitude towards agreements on disarmament is analyzed in the next chapter. The Soviet Government has acceded to the Briand-Kellogg Pact of August 27, 1928, for the prevention of war;[114] to several agreements regulating the conduct of war, notably the Hague Conventions of 1907 on Hospital Ships, on War on Land, and on the Rights and Duties of Neutral Powers in Naval Warfare; to the Geneva Conventions of 1906 on Sick and Wounded, and

[111] *Sborn. Deistv Dogov*, V, 1930, pp 10ff (XC, 219, L N T S), and VI, 1931, pp. 5ff.; *Sobr Zak i Rasp. S.S.S.R.*, 1932, II, pp 329ff.; *ibid*, 1932, II, pp. 68ff.; ibid., 1933, II, pp 41ff, respectively.

[112] *Sborn. Deistv Dogov*, V, 1930, pp. 5ff ; XC, 219, L.N T S

[113] Articles 1 of the Conventions.

[114] *Sobr. Zak i Rasp. S.S.S.R*, 1929, II, p 525.

of July 27, 1929 for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field,[115] and to the Protocol on Poisonous Gases of June 7, 1925.[116]

Economic agreements, in the broad sense, include treaties of two classes: those of *commercial interest primarily*, such as treaties of Commerce and Navigation, or tariff agreements; and treaties which are of an administrative character, such as postal and telegraph conventions, agreements on communication and *transit*, weights and measures, geodetic surveys, fisheries, and the protection of industrial property, etc. Treaties of commerce have been concluded by the Soviets with almost every foreign country.[117] As in similar treaties concluded before the *de jure* recognition, the principle of the most-favored-nation is outstanding in these treaties: witness the Treaty with Italy of February 7, 1924; with China of May 31, 1924; with Japan of January 20, 1925, in the part containing economic clauses; with Germany of October 12, 1925; with Turkey of March 11, 1927,

[115] *Sborn. Delstv. Dogov*, I–II, 1928, pp. 360ff, and CXVIII, 305, L N T S, respectively.

[116] *Sobr. Zak. i Rasp. S S S R*, 1928, II, pp. 949ff

[117] With Italy of Feb. 7, 1924, with Germany of Oct. 12, 1925 (LIII, 7, L.N T S), and the Protocol of Dec 21, 1928, with Norway of Dec. 15, 1925 (XLVII, 10, L N T S); with Iceland of May 25, 1927 (XLIII, 105, L.N.T.S.); with Latvia of July 16, 1926, and June 2, 1927 (LIV, 155 and LVIII, 321, L N T S. respectively); with Estonia of May 17, 1929 (XCIV, 323, L N.T.S.); with Lithuania of Sept 4, 1928; with Poland of Aug. 3, 1925, with Great Britain of April 16, 1930 (CI, 409, L.N T S), with Greece of June 11, 1929; with Denmark of Apr. 23, 1923 (XVIII, 16, L.N.T S), and Notes of June 18, 1924, with Sweden of Mar. 15, 1924, and Oct 8, 1927 (XXV, 252, and LXXI, 411, L.N.T S., respectively); with Turkey of Mar 11, 1927, and Aug 6, 1928; with Persia of Oct 1, 1927, and May 31, 1928 (CXII, 314, and CX, 343, L.N.T.S respectively); with China of May 31, 1924 (XXXVII, 176, L N T S) For Soviet laws supplementing the provisions of these treaties see· (For Italy)—Decrees of the People's Commissariat for Trade of July 22, 1924, No. 81, and Aug 24, 1924, No. 99, also, Circular of Central Customs Department of July 1, 1924, No 190, and Mar. 14, 1928, No. 3. (For Germany)—Decrees of People's Commissariat for Trade of Mar. 17, 1926, No. 251, of Sept. 14, 1926, No 227/A; Decrees of the Central Customs Department of Apr 29, 1929, No. 152, of Jan. 15, 1929, Nos. 50, 51 and 52, and of December 15, 1928, No 41; and Circular of the Central Customs Department of Jan. 15, 1929, Nos. 33663–33664. (For Norway)—Decree of the People's Commissariat for Trade of Nov. 23, 1928, No. 640 (For Iceland)—Decree of Central Customs Department of March 26, 1929, No 110 (For Latvia)—Decree of People's Commissariat for Trade of Nov. 21, 1927, No. 437, and Dec 24, 1927, No. 1605. (For Lithuania)—Decree of People's Commissariat for Trade of Oct. 17, 1928, No. 2. (For Greece)—Decree of People's Commissariat for Trade of July 5, 1929, No. 62; (For Denmark and Sweden)—Decree of Central Customs Department of Apr. 12, 1929, No. 145. (For Turkey)—Decrees of People's Commissariat for Trade of June 27, 1927, No 403, of May 20, 1928, No. 43, and of July 13, 1927, No. 412. (For Persia)—Decrees of People's Commissariat for Trade of Oct. 26, 1927, No 158, of Dec 14, 1927, and of Mar. 5, 1928, No 24.

and November 11, 1931; with Persia of October 1, 1927; with Latvia of June 2, 1927; with Estonia of May 17, 1929, and with Great Britain of April 16, 1930.[118] The varying extent to which this principle is applied is seen from the following brief illustrations. In the Treaty with Italy the rate of taxation was not to be "less favorable" than that accorded to citizens of the most-favored nation, while the privileges of trade enjoyed by a third country should be extended to the nationals of the Contracting Parties "without any [additional] conditions." [119] Article 1 of the Treaty with Germany contained a provision that the privileges accorded to a third state "must be applied *immediately and absolutely* to the other Contracting Party." This absolute form of the most-favored-nation principle was restricted, however, by additional provisions by which this principle was not to be applied to the rights which had been accorded or might be accorded to any third state forming part of a customs union with the Soviet Union; or to the privileges which the U.S.S.R. had accorded, or might accord, to Persia, Afghanistan, Mongolia, Turkey or China with respect to local trade between the inhabitants of the frontier zones.[120]

Closely connected with commercial treaties, indeed sometimes forming part thereof, are agreements on navigation. In Soviet practice the most numerous are those regulating the measurement of ships.[121] Aside from the individual agreements, the Soviet Union has undertaken the obligations of the Paris Convention of 1884 on Collisions at Sea and Salvage, as revised at Brussels on September 23, 1910, although technically it cannot be called a party to either of them.[122] Their principles have also been

[118] XXXVII, 176, L N T S.; XXXIV, 32, L N T S , LIII, 7, L N T S., LXVIII, 231, L.N.T S ; XCIV, 323, L.N T S and CI, 409, L N T S for Agreements with China, Japan, Germany, Latvia, Estonia and Great Britain, respectively

[119] Arts 6 and 8 respectively

[120] Art 2 *Cf* also Art 1 of the Treaty of Commerce with Great Britain of Apr. 16, 1930 Similar limitations are found also in the Treaty with Norway in respect to the preferential régime accorded by the Soviets to the Baltic Republics and to Asiatic Countries (Art 32.)

[121] Appendix XXIV.

[122] On March 15, 1926, a Decree was passed by which these Conventions were declared operative in the U.S.S R (*Sobr. Zak i Rasp S.S.S R*, 1926, I, p 271). Art. 15 of the Convention on Collision provides that states may adhere by notifying the Belgian Government through diplomatic channels, *cf* Brit. Parl Papers, Miscel., No. 5, (1911) [Cd 5587] p 9 Earlier decrees had implicitly recognized the principles underlying these Conventions· Decrees of Oct 29, 1920, Oct. 17,

recognized in international treaties of the Soviets, for instance in the Treaty with Germany of October 12, 1925.[123] Mention must be made also of the International Agreement concerning Manned Lightships not on their Stations, and the Agreement concerning Maritime Signals, both signed at Lisbon on October 23, 1930, to which the Soviet Union is a signatory party.[124]

As to customs tariffs, Soviet treaties have relatively few provisions. In those treaties which deal with the subject, the method of calculating the discount granted the other contracting states is a certain percentage of the Soviet tariff rates in force, and not fixed figures established by the treaty itself.[125] This principle is applied in the Treaty with Italy of February 7, 1924, and in the Customs Convention with Persia of March 10, 1929.[126] By using this method of establishing international tariffs the Soviet Government not only secures the advantages of the principle of the most-favored-nation (which provision always accompanies that relative to the customs tariffs), but reserves to its national legislation freedom of changing tariffs without violating the obligations agreed upon in international treaties.

Economic treaties of an administrative character cover a wide variety of subjects. The enumeration of Soviet treaties found in the Appendix XXIV shows that the Soviets have not only entered into numerous agreements of this kind with separate states, but have acceded to international conventions as well. They have subscribed to the principles established by the International Postal Union. Article 2 of the Agreement with Sweden of September 12, 1924, provides:

1921, and June 7, 1923 (*Sobr Uzak i Rasp R.S.F.S.R.*, 1920, p. 453; 1921, p. 686 and 1923, I, pp 969–970). *Cf* also Decree of Dec 23, 1924 (*Sobr. Zak. i Rasp.* S.S.S.R., 1924, I, pp 110–112); Suppl Arts. 196[1] and 218[8] to the Soviet Criminal Code of 1922; Decree of June 14, 1926 (*Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1926, I, p. 414); Decree of Jan. 8, 1925 (*Sobr Zak. i Rasp. S.S.S.R.*, 1925, I, pp. 27ff) and Decree of July 27, 1926 (*ibid.*, 1926, I, pp. 1007–1011).

[123] Art. 7 of the Convention on Maritime Navigation (*Sborn Deistv. Dogov.*, III, 1926, p. 98; LIII, 7, L.N.T.S.) *Cf* also Art. 4 of the Soviet-British Treaty of Commerce of Aug 8, 1924 (never ratified).

[124] *Sobr. Zak. i Rasp. S.S.S.R.*, 1931, II, pp. 524ff. and 544ff., respectively.

[125] *Cf.* Treaty with Norway of Dec. 15, 1925; XLVII, 10, L.N.T.S.

[126] *Sborn. Deistv. Dogov*, VI, 1931, pp. 52ff.; CVII, 419, L.N.T.S *Cf* also Conventions with Finland of Apr. 13, 1929, and with Bukhara of May 31, 1923 (*Sborn. Deistv. Dogov*, V, 1930, p. 45, and I, 1924, p. 317, respectively; XCVI, 106, L.N.T.S., for Convention with Finland).

"The provisions of the conventions, agreements, and instructions of the International Postal Union shall be applied to all matters relative to the exchange of mail which are not covered by the present Agreement." [127]

The Soviet Union is one of the parties to the Stockholm Postal Convention of August 28, 1924, and to the London Postal Convention of June 28, 1929. The Telegraphic Conventions of St. Petersburg of 1875 and of Lisbon of 1908, and the Regulations of Paris of 1925 supplementing the former, were made applicable to the Soviet Union in 1926.[128] The Brussels Telegraphic Convention of September 22, 1928, was made applicable to the Soviet Union by a Decree of the Council of Peoples' Commissaries of October 8, 1929.[129] Despite the fact that international agreements on radio have become quite numerous in recent years, there is only a single example of Soviet participation therein: the Agreement with Estonia of June 27, 1924, whose provisions contain nothing exceptional.

The Soviet Union has entered into several treaties regulating the transportation of persons and goods by water, land, and air.[130] Most of these have been concluded separately with individual states, the most interesting being the Convention with Finland of June 5, 1923, concerning navigation on the Neva River between the Gulf of Finland and Lake Ladoga. According to this Convention, Finnish trading and cargo vessels are entitled freely to navigate the Neva, provided that they do not transport "war material or articles of military value, or goods the import of which into the R.S.F.S.R. is absolutely prohibited by reason of their constituting a danger to public safety or health." Article 5 reads:

"The Russian Government shall not take measures calculated to hinder or render difficult through navigation and communication of vessels on the Neva.

"Russia, however, reserves the right to make exceptions:

"(1) In case Russia and Finland should be at war with any third power;

[127] *Sborn Deistv Dogov*, I–II, 1928, pp. 322ff., XXI, 76, L N T S

[128] *Sobr Zak i Rasp S.S.S.R.*, 1928, II, pp. 101ff

[129] *Ibid*, 1929, II, pp 961ff *Cf* Agreements with Mongolia of Oct 3, 1924, and Feb 25, 1927 (*Sborn Deistv Dogov*, I–II, 1928, pp 137ff)

[130] See Appendix XXIV.

"(2) In case the Petrograd or North Districts should be threatened by any military danger;

"(3) With regard to contraband of war;

"(4) For the protection of persons and animals against infectious disease, and

"(5) For the regulation of traffic in accordance with traffic requirements on the Neva." [181]

Agreements of the Soviets showing their attitude towards navigation through straits have already been analyzed, and the difference between their desire to protect the sovereignty of Turkey in the case of the Bosphorus and Dardanelles and their readiness to support the internationalization of the Danish Belts has been brought out.[182]

The treaties regulating transportation by railway are more numerous and touch upon a variety of problems connected therewith, such as the crossing of frontiers, transit of goods, transportation of passengers, etc. Peculiar among the agreements of this nature is the Agreement with China for the provisional management of the Chinese Eastern Railway of May 31, 1924. It provides for a Board of Directors to be composed of ten persons, of whom five shall be appointed by the Chinese Government and five by the Soviet Government. This principle of parity is also emphasized in other provisions:

"Article 4: If the Chief of Department is a national of the Republic of China, the Assistant Chief of Department shall be a national of the Union of Socialist Soviet Republics, and if the Chief of Department is a national of the Union of Socialist Soviet Republics, the Assistant Chief of Department shall be a national of the Republic of China.

"Article 5: The employment of persons in the various departments of the Railway shall be in accordance with the principle of equal representation between the nationals of the Republic of China and those of the Union of Socialist Soviet Republics."

"Article 6: With the exception of the estimates and budgets, as provided in Article 7 of the present Agreement, all matters on which the Board of Directors cannot reach an agreement shall be referred for settlement to the Governments of the Contracting Parties." [183]

[181] Art 1. (*Sborn Deistv Dogov.*, I–II, 1928, pp. 330ff.; XVIII, 204, L.N.T.S.)
[182] *Supra*, p 69.
[183] *Sborn Deistv. Dogov.*, II, 1925, pp. 102–104; XXXVII, 194, L.N.T.S.

There are no separate treaties concluded by the Soviet Union on auto transport or traffic. It has, however, participated in international conventions on this subject Thus, a decree was passed on December 29, 1925, by which:

"The International Convention relative to auto-traffic signed at Paris on October 1, 1909, shall be applicable to the Union of S.S.R." [134]

Shortly thereafter, on April 14, 1926, the Soviet Union became one of the original parties to the Paris International Convention on Auto-Traffic.[135]

The agreements relative to air-routes and transport have already been mentioned. They contain provisions concerning innocent passage, registration and "ship's" papers, prescribe routes and definite landing places, and make transit subject to the territorial state's rights of search and jurisdiction. Of the Soviet treaties of this nature the most complete is that signed by the U.S.S.R. and Persia on Air Transportation, of November 23, 1927, which offers no peculiarities as compared with similar treaties of other countries.[136]

The object of international agreements on weights and measures, and on geodetic surveys, is to facilitate general intercourse between states, while the object of international agreements on fisheries and the protection of industrial property is to promote certain occupations and trades. The Soviet Union has shown its interest and approval of these ideas by acceding to all the important international conventions dealing therewith. Thus by a Decree of June 16, 1925, it acceded to the International Convention on Weights and Measures of 1875, as revised in the Convention of Sèvres of 1921.[137] In 1926 it acceded to the Baltic Geodetic Convention of December 31, 1925.[138] A decree of

[134] *Sobr. Zak i Rasp. SSSR*, 1926, I, pp 275ff
[135] *Sborn Deistv Dogov*, VI, 1931, p 150
[136] See Appendix XXIV *Cf.* also Art 8 of the Treaty of Peace with Finland of 1920 by which Soviet flying machines have the right to fly over the Pechenga District on their way to Norway and back, provided that they carry no arms of any kind; and Art 9 of the Agreement with Finland of Oct. 28, 1922, by which the RSFSR has the right of transit by air over the same district provided that machines comply with international technical rules of flying approved by Finland
[137] *Sobr Zak i Rasp SSSR*, 1927, II, pp 481ff.
[138] *Sborn. Deistv. Dogov.*, V, 1930, pp 106ff

February 2, 1926, made the Washington Convention of July 7, 1911, for the Preservation and Protection of Fur Seals, applicable to the Soviet Union.[130] As to treaties providing for the protection of industrial property (patents and trademarks) and of literary and artistic property (copyrights), the Soviet Union has not acceded to any multipartite conventions, preferring the policy of concluding separate treaties with individual states. There are several such,[140] which while differing from each other in minor details, follow the principles laid down in the Bern Convention of 1886 on Copyright, as modified by the supplementary conventions of Paris (1896), Berlin (1908), Bern (1914) and Rome (1928), and in the Paris Convention on Protection of Industrial Property of 1880, as modified by the supplementary conventions of Paris of 1883, Rome of 1886, Madrid of 1890, Brussels of 1897, Washington of 1911 and The Hague of 1925. Furthermore, the Soviet delegates on April 20, 1929, signed at Geneva the International Convention on Prevention and Punishment of Counterfeiting Currency.[141] On June 17, 1924, the Council of Peoples' Commissaries passed a decree by which the Soviet Union acceded to the Paris Convention for the Creation of the International Institute of Refrigeration of June 21, 1920.[142]

Juridical

So much for economic treaties. The next group comprises treaties whose aim is primarily of a juridical nature: to secure mutual coöperation in the administration of civil and criminal law. Of the Soviet agreements envisaging civil remedies, mention may be made of those with Austria of September 19, 1924, with Germany of October 12, 1925, with Latvia of June 2, 1927, and with Estonia of January 20, 1930.[143]

Article 1 of the Agreement with Austria provides that:

[130] *Sobr Zak i Rasp. S.S.S.R.*, 1926, I, pp. 312ff. *Cf* also Art 3 of the Agreement with Japan of Jan. 20, 1925, and Art 32 of the Treaty with Italy of Dec. 7, 1924.

[140] Agreements with Austria of Apr. 26, 1927, Germany of Oct. 12, 1925, Denmark of Dec. 23, 1927, Italy of Feb. 7, 1924, Norway of Feb 24, 1928, and Estonia of Mar. 3, 1928 (*Sborn Deistv. Dogov*, IV, 1928, p. 56; *ibid.*, III, 1927, p. 74 (LIII, 7, L.N.T.S.); *ibid*, IV, 1928, p. 58 (LXX, 246, L.N.T.S.); *ibid*, II, 1925, p 35; *ibid*, V, 1930, p 72 (LXXIV, 9, L.N.T.S.); and *ibid.*, V, 1930, p. 88 (LXXX, 401, L.N.T.S.), respectively).

[141] *Sobr. Zak. i Rasp S.S.S.R.*, 1932, II, pp 84ff.

[142] *Sborn. Deistv Dogov.*, IV, 1928, p 115.

[143] *Ibid*, II, 1925, p. 32, III, 1927, p 74 (LIII, 7, L.N.T.S.); IV, 1928, p. 61 (LXVIII, 321, L.N.T.S.); and VI, 1931, p 15 (CII, 225, L.N.T.S.), respectively.

"The Contracting Parties undertake mutually to extend to each other juridical assistance in civil matters by forwarding official papers and the execution of courts' requests concerning judicial procedure, or any other juridical act within the competence of the organs to which the request is submitted." [144]

On the criminal side, no provision appears to have been made by the Soviets for international coöperation through extradition proceedings, a possible explanation being that the Soviet notion of crime does not conform with that of the non-communist states.[145]

Social and Humanitarian

There is a last group of international treaties and agreements which deal with social and humanitarian problems: the promotion of life and health, the regulation of the conditions of labor, and the protection of social, religious, and linguistic minorities. The Soviet Union has coöperated in various ways for the preservation of human life and health. It entered into Sanitary Conventions with Latvia on June 24, 1922, with Poland on February 7, 1923, and with Estonia on June 25, 1922.[146] Furthermore it acceded to

[144] *Sborn. Deistv. Dogov*, II, 1925, p. 32. *Cf.* also Art. 67 of the Soviet Code of Civil Procedure, which provides that "all communications of the courts with persons and offices outside the Soviet Union shall be carried out through the People's Commissariat for Foreign Affairs (*Sobr. Kodeksov R.S.F.S.R.*, 4-e izd., p. 890). *Cf.* also the provisions of Art. 13 of the Treaty with Germany of May 6, 1921, and of Art. 15 of the Agreement with Czechoslovakia of June 5, 1922, which read respectively:

"The Russian Government undertakes to insert an arbitration clause in all legal transactions with German nationals, German firms and German corporate bodies in the territory of the R.S.F.S.R. . . . The right of the Russian Government to insert arbitration clauses in legal transactions entered into in Germany remains unaffected" (*Sborn. Deistv. Dogov.*, I, 1923, pp. 56–57, VI, 268, L.N.T.S.)

"Citizens, firms and juridical persons of one country upon entering into legal contracts with citizens, firms or juridical persons of the other have the right to insert an arbitration clause in these contracts, or, in cases of conflict mutually to agree upon the jurisdiction of the courts of either of the contracting states" (*Ibid.*, I, 1924, pp. 190–191.)

[145] *Cf.* Art. 16 of the Principles of Criminal Procedure as embodied in the Decree of the Central Executive Committee of Oct. 31, 1924 (*Sobr. Zak. i Rasp. S.S.S.R.*, 1924, I, pp. 383–384) and Circulars of the People's Commissariat for Justice of 1923, No. 92, and of 1924, Nos. 85 and 188 (*Ezhened. Sov. Justitsii*, 1923, No. 20, and 1924, Nos. 23–24, and 45, respectively) and of the People's Commissariat for Foreign Affairs of 1924, No. 221. *Cf.* also Sokolov, "Liga Natsii i Vydacha Prestupnikov," *Mezhd. Zhizn'*, 1927, VII, pp. 85–90, and Mokrinskii, "Politicheskie prestupleniia v mezhdunarodnykh dogovorakh o vydache prestupnikov," *ibid.*, 1924, II–III, pp. 104–126.

[146] *Sborn. Deistv. Dogov.*, I, 1924, p. 423 (XXXVIII, 10, L.N.T.S.); *ibid.*, II, 1925, p. 118 (XLIX, 285, L.N.T.S.), and *ibid.*, I, 1924, p. 432, respectively. On June 4, 1918, a Decree was passed by the Council of Peoples' Commissaries of the R.S.F.S.R. by which the International Red Cross should be recognized, and the Geneva Convention of 1864, in ". . . its original and all later forms, as well as all other international conventions relative to the Red Cross recognized by Russia prior to 1915 shall be recognized and followed by the Russian Soviet Government" (*Izvestiia*, June 4, 1918, No. 113.)

the International Sanitary Conventions of Paris of January 17, 1921,[147] and of June 21, 1926.[148] On October 27, 1925, the Soviet Union acceded to the International Agreement on Organization of the Internationl Bureau of Public Hygiene. With the Commission of the League of Nations on Epidemics, the Soviet Government entered into an Agreement by which the People's Commissariat for Health undertook to extend its assistance in every possible way.[149] Mention must finally be made of the Declaration of October 27, 1927, by which the Soviets acceded to the Convention on the Establishment of an International Office for the Study of Contagious Diseases, of January 25, 1924.[150] There is no evidence in the Soviet records that they have acceded to international conventions on drugs and narcotics.

Agreements which may be called "social," are those concerning labor, particularly of women and children; those relating to slavery; those for the protection of racial, linguistic, and religious minorities; and finally, those on the white slave traffic. Paradoxical as it may appear, there are no special treaties or agreements of the Soviet Union on problems relative to labor, nor has it acceded to any of the numerous multipartite conventions signed at conferences held in Washington (1919), and Geneva (1920–1930); nor is it a member of the International Labor Office. No compromise sanctioning the exploitation of labor by capital in noncommunist countries is possible for the Soviets. Speaking of the International Labor Office, Professor Korovin says:

"An organization believing in an illusory possibility of peaceful coöperation between [different] classes (the exploited and the exploiting) and in the possibility of solving social problems of a capitalistic economic order by an evolutionary process, is nothing but a bridge between the bourgeoisie and the "heads" of the bureaucratic professional unions, and [as such] a means to overshadow the class consciousness of the toiling masses."[151]

The problem of slavery is not directly considered in Soviet laws. Although the Berlin Act of 1885 and the Brussels Convention of 1889–1890, which were revised in the St. Germain Con-

[147] *Sobr. Zak. i Rasp. S.S.S.R.*, 1926, I, pp. 1251ff.
[148] *Sborn. Deistv. Dogov.*, V, 1930, pp. 148ff.
[149] *Ibid.*, I–II, 1928, pp. 359ff.
[150] *Sobr. Zak. i Rasp. S.S.S.R.*, 1928, II, p. 1431.
[151] Korovin, *Sovremennoe Mezhdunarodnoe Publichnoe Pravo*, 1926, p. 128.

vention of 1919[152] and later in the Convention of September 25, 1926, appear to be in accord with communist ideas of human liberty, they have not been acceded to by the Soviet Union, no reason for this being found in the Soviet records Yet Article 1543 of the Soviet Naval Code (Statute on the Service on Vessels of the Workers' and Peasants' Red Fleet of May 25, 1925) provides that every foreign vessel may be arrested on the high seas if it is violating the provisions of the Brussels and other Conventions relative to slavery.[153]

There is no evidence that the Soviets have cooperated with other states for the control of the white slave traffic.

The Soviet Union has not become a party to any international agreements, either bilateral or multilateral, for the protection of racial, linguistic, or religious minorities, although in the early treaties of the R S.F.S.R., the right of nationalities to self-determination was consistently recognized.

Apart from all these treaties, although partaking of the nature of many of them, are treaties of guaranty, a device much resorted to after the Treaty of Westphalia. Their aim is sometimes the fulfillment of an international obligation, sometimes the maintenance of the existing status, the territorial integrity, the independence of a state, its neutrality, or the like.[154] The resort to these treaties of guaranty its evidence of the recognition of

Treaties of Guaranty

[152] Art 14. A possible explanation, namely that the Soviet Union has no possessions in Africa, or that it is not a member of the League of Nations, is not convincing in view of the fact that the United States of America, which is in a similar position, has acceded to these conventions

[153] *Ustav Korabel'noi Sluzhby R K.K F*, 1925

[154] On maintenance of the existing status, *cf* the Russian-Japanese Treaty of July 4, 1910, guaranteeing the maintenance of the *status quo* in Manchuria, the Declarations exchanged on May 16, 1907, between France and Spain on the one hand, and on the other between Great Britain and Spain concerning the territorial *status quo* in the Mediterranean, the Declarations signed at St Petersburg on April 23, 1908, concerning the *status quo* in the Baltic See also a Declaration on the *status quo* in the Pacific Ocean, namely the Pacific Treaty of Dec 13, 1921, between the United States of America, Great Britain, France, and Japan On territorial integrity, *cf* the Treaty of Christiania of Nov 2, 1907, between Great Britain, Germany, France, and Russia, guaranteeing the integrity of Norway The Treaty of July 13, 1863, between Great Britain, France and Russia, and Denmark guaranteed Greece as a "monarchial, independent and constitutional State" *Cf also the Treaty of Havana of May 22, 1903*, guaranteeing the independence of Cuba; the Treaty of Washington of Nov 18, 1903, guaranteeing the independence of Panama, and the Treaty of Port-au-Prince of Sept. 16, 1915, in respect of Haiti As an illustration of treaties guaranteeing neutrality, *cf* the Act of Acknowledgment and Guaranty of the Perpetual Neutrality of Switzerland, and of the Inviolability of the Territory, signed at Paris on Nov 20, 1815

the inequality of the political power of states; strong states are called upon to guarantee weaker one. The very fact, however, that the guaranteeing states are usually the strong ones, lessens the practical possibility of forcing them to fulfill the obligation they have themselves undertaken.[155] The degree of reliance, therefore, that can be placed upon treaties of guaranty must be sought in the political balance of power, determined either by military strength or economic importance. The political isolation of the Soviets precludes the possibility of their combining with other powers to coöperate in such a guaranty. This is the explanation of the fact that no such treaties have been entered into by the Soviets.[156]

Treaty Obligations and Territorial Changes

To conclude this study on Soviet treaties a few words are in order in regard to the binding force of treaties in cases where the territorial composition of the state changes. There have been three periods in the political life of the Soviet Union which warrant mention of this problem. The first was in 1923, when the Union itself was formed; the next was in 1925, when the U.S.S.R. was augmented by the Uzbek S.S R. and Turkmen S.S.R.; the last was in 1929, when the Tadzhik S.S.R. became the seventh member of the Union.[157] The treaties entered into by the Soviet republics prior to 1923 did not contain any provision relative to such changes, because the idea of the Union itself was a rather sudden development, which had not been foreseen at the time these treaties were concluded. When the Union was actually formed in 1923, notification was immediately sent to the foreign representatives in Moscow by the People's Commissariat for Foreign Affairs of the individual Union republics and by the People's Commissariat for Foreign Affairs of the newly formed Union of S S.R.[158] The latter reads in part:

". . . the People's Commissariat for Foreign Affairs of the U.S.S.R. is charged with the execution in the name of the Union of all its

[155] *Supra*, p 235

[156] The term "guaranty treaties" used in the Soviet treaties refers to the treaties of neutrality referred to in the next chapter.

[157] *Sobr Zak. i Rasp. S S S.R.*, 1929, I, pp. 1414–1415.

[158] The People's Commissariat for Foreign Affairs of the Ukrainian S.S.R. sent its notification on July 16, 1923, while in the R S F.S.R., the White-Russian S.S R. and Transcaucasian S F S R they were forwarded on July 21, 1923. The notification by the People's Commissariat for Foreign Affairs of the U.S.S R. was sent on July 23, 1923. (For text see *Sborn Deistv Dogov*, I, 1924, pp. 20–24)

international relations, including the execution of all treaties and conventions entered into by the above mentioned Republics [R S F S R., White-Russian S S R., Ukrainian S S R., and Transcaucasian S F S R.] with foreign states which [treaties and conventions] shall remain in force in the territories of the respective republics" [159]

Similar notifications were sent by the People's Commissariat for Foreign Affairs of the U S.S R. in 1925, and again in 1929, when new Soviet Republics were admitted to the Union. The text of the Notification issued on June 15, 1925, reads in part:

"I am authorized and have the honor to inform you . . . that the Turkmen and Uzbek Republics, which have acceded to the Treaty of Formation of the U.S S R., and have been formally admitted to it [the Union] as of May 13, 1923, subject to the conditions set forth in the Union Constitution, form an integral part thereof, with all the rights and obligations resulting therefrom, and on the basis of complete equality with every other Soviet state which is a member of the Union."

The formation of the Union and the subsequent admission of new republics to it gave rise to certain related problems of state succession: (1) to what extent the individual Soviet Republics had the right to undertake any international obligations separately from the Union after they have joined the latter, (2) to what extent the Union was called upon to take over the obligations previously entered into by the individual Union Republics, (3) to what extent the individual Soviet Republics that had joined the Union remained bound by their previous treaties, and *vice versa*, (4) to what extent the treaties previously entered into by the Union were binding upon the republics which had just joined it, and (5) to what extent the treaties entered into by separate members of the Union should be binding upon other members.

Treaty-making Rights of Separate Republics

There is no difficulty in answering the first question. Article 1 of the Constitution clearly provides that the conclusion of political and other treaties with foreign states is within the sovereignty of the U.S.S.R. as a whole.[160] True, there is no provision expressly saying that this right is reserved to the

[159] *Sborn. Deistv. Dogov.*, I, 1924, p. 24.
[160] Appendix I

Union *exclusively*. An analysis of Soviet international conduct, however, permits the conclusion that the individual Union Republics have no right to undertake any international obligations separately from the Union.

ligations the Union

As to the second problem, it is clear that if, according to the prevailing theory, the treaties of an annexed state lose their force, the annexing state must take over the obligations of the annexed state. Theoretically, therefore, the Soviet Union should have taken over the treaty obligations of the republics that joined the Union in 1925 and 1929. The inference that the Union intended to assume the obligations of the annexed territories is strengthened by the fact that this adherence to the Union was dictated by economic necessity rather than by political choice, and was more to the advantage of the Union than to the republics joining it. The omission of a statement to that effect in the Notification of 1925 may be ascribed to the lack of any necessity for so doing. Strictly speaking, however, Soviet legal material is silent as to the extent to which the treaty obligations of the individual republics joining the Union after 1923 were taken over by the latter. On the other hand, the Notification of 1923 stipulated that the treaties entered into by the separate Soviet Republics then uniting to form the Union, prior thereto, should "remain in force in the territories of the respective republics." As to these treaties, therefore, which, as an exception to the general principle, continued in force, the Union assumed only an indirect obligation, as the individual republics remained primarily responsible.

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As to the third problem, the usual practice is that when a state is annexed to another state the treaties of the former lose their force.[161] The Notification of 1923, however, definitely stated that the treaties entered into by the separate Soviet Republics should continue in force in the territories of the respective republics. However, the situation in regard to the Soviet Republics that joined the Union later, *i.e.*, the Turkmen S.S.R. and the Uzbek S.S.R., is not identical. True it is that by a Resolution of the 3rd Congress of the Soviets of the U.S.S.R., the Treaty of Formation of the

[161] Oppenheim, *International Law*, 4th ed., I, pp 168 and 464.

Union of S.S.R. was extended to these republics,[162] so that theoretically the provisions of the Notification of 1923, applicable to the "charter members" of the Union, were applicable to them, too. However, it was inevitable that a certain period of time should elapse between the accession of new republics and the issue of decrees periodically modifying the Constitution to cover the new members Furthermore, the Constitution contains a special provision envisaging the admission of new members to the Union *by treaty*.[163] Thus the accession of the Turkmen, Uzbek, and Tadzhik republics in 1925 and 1929 were certainly not acts of forming a Union, but of joining one already existing. In other words, they were instances of peaceful annexation, and, as such, subject to the theoretical principles regarding the same (which seems to be proper, for in spite of the non-hostile nature of the affiliation, the economic and social compulsion involved should not be overlooked). This may account for the vagueness of the terms of the Notification of 1925, which renders it difficult to conclude from its text whether or not the Turkmen and Uzbek Soviet Republics remained bound by their treaty engagements.

Obligations of Republics for Union Treaties

The same difficulty exists as to reverse of the problem, *i.e.*, to what extent the treaties entered into by the Union bound the republics which joined it later. There are rules of international law dealing with instances where sovereign independent states form a union or federation, but there is no principle in international law specifically covering the case of admission to an already existing union, except in cases of annexation, where the treaties of the receiving state are extended over the annexed state.[164] The expression in the Notification of 1923 referring to the Resolution of the 3rd Congress of the Soviets of the U.S.S.R. to the effect that Treaty of the Formation of the Union was to be "extended," to the new members, certainly precludes the states joining the Union later from being parties to the "formation of the Union." Consequently, if this is a case of joining an already existing union, the appropriate principles

[162] *Cf.* also the Decree of Dec 5, 1929, upon the accession of the Tadzhik S S R. (*Sobr. Zak. i Rasp S.S.S R*, 1929, I, par 717)

[163] Article 1, clause "c"

[164] Oppenheim, *as cited*, 4th ed, I, pp 168 and 464.

regarding annexation must be applied. In view of this, and since there is no explicit statement to the contrary found in the Soviet legal material, the conclusion may be reached that the language of the Notification of 1925 signifies that the treaties of the Union entered into prior to the accession of the individual republics are binding upon them.

Obligations of republics for treaties of other republics

The fifth and the last problem is the extent to which treaties that had been entered into by separate member states of the Union applied to other members. Legally, there is no problem in this respect, for from what has already been said, it is apparent that if a treaty had been entered into by the R.S.F.S.R., for example, prior to the formation of the Union in 1923, it remained in force thereafter only within the territory of the R.S.F.S.R., and did not become applicable either to other "charter members" of the Union, *e.g.*, the Ukrainian S.S.R. or the White-Russian S.S.R. or the Transcausian S.F.S.R , or to the republics that joined the Union in 1925 and in 1929. In practice, however, the issue was not so simple. The treaties of the individual Republics made prior to the Union fall into different categories. In some cases the treaties envisaged such purely local concerns that there was no question of extending their operation, or the mere lapse of time precluded any question arising as to an extension of their provisions to other Soviet states, for some early treaties of the individual Union Republics had been fully executed, and hence had expired prior to the formation of the Union. In other cases, however, treaties of individual Union Republics were in actual practice applied to other portions of the Union, contrary to the implications of the law, until, gradually, they were superseded by treaties of the Union as a whole.

Treaties relating to communications and the transit of boundaries, signed by individual Soviet Republics prior to the formation of the Union, were strictly local and inherently inappropriate for application to other republics. Such were, for instance, the Convention between the Georgian S.S.R. and Turkey of March 20, 1922, on crossing the common frontier, the Postal and Telegraphic Convention between the Transcaucasian S.F.S.R. and Turkey of July 9, 1922, the Convention between the R.S.F.S.R. and Finland

of October 28, 1922, on rafting timber, and a similar Convention with Estonia of May 9, 1922 [165]

The provisions of the treaties of peace concluded between separate Soviet Republics and the Baltic States and Poland, relative to the settlement of problems which resulted from the war, or the fact that these states were formerly part of the Russian Empire, such as restoration of national property and repatriation of nationals, caused no difficulty after the formation of the Union, for besides being local, they had been fully executed before the formation of the Union took place, as was the case with the agreements on repatriation of war prisoners and nationals with France of April 20, 1920, with Belgium of the same date, and with Hungary of May 21 and July 28, 1921.[166]

Aside, however, from these treaties whose provisions were of a local or temporary nature, other agreements had been entered into by individual Soviet states whose obligations were continuing. These presented a real problem to the central government from the moment the Union was formed, until it was possible to negotiate new treaties to replace them. Confusion was bound to arise in conducting the international relations of a confederation whose different members were bound by different treaty obligations, but whose identity, as far as foreign states were concerned, had been fused into a new international entity For example, the single Soviet citizenship made it difficult to differentiate between a Soviet citizen, say of the Ukrainian S.S.R and one of the White Russian S.S R., although they might claim different rights and privileges under different treaties with foreign states. The merchant marine of the Soviet Union sailed under one flag, although the vessels might belong to the R.S F.S.R , the Ukrainian S.S.R., or the Transcaucasian S F.S R., and be the subject of different navigation treaties. Finally, the exports of the Soviet Union comprised goods which had their origin in various Soviet Republics, and as such might be subject to different tariffs abroad.

[165] *Sborn. Deistv. Dogov.*, I, 1924, p 276; *ibid*, I, 1924, p 355, *ibid*, V, 1923, p. 13 (XIX, 184, L N.T.S); and *ibid*, I, 1924, p. 337, respectively

[166] *Ibid*, I, 1921, p. 156; *ibid.*, I, 1924, p 218; *ibid*, I, 1921, p. 123, and *ibid*, II, 1921, p. 86, respectively.

The result was that the provisions of the treaties of separate republics were occasionally actually applied to the other republics. Sometimes this appears to have been done upon the sole responsibility of the Union authorities, to smooth the progress of international intercourse, and at other times it was at least suggested by the wording of the treaties themselves. A Decree of the Council of People's Commissaries, of April 11, 1921, purporting to be in execution of a Trade Agreement between the R.S.F.S.R. and Great Britain, of March 16, 1921, ordered the following ports to be opened:

"In the White Sea, Murmansk and Archangel.
In the Black Sea, Odessa, Nikolaev, Sebastopol . . .
In the Baltic Sea, Kronstadt." [167]

Of these, Murmansk, Archangel and Kronstadt alone are in the R.S.F.S.R., the others being in the Ukrainian S.S.R.

The Treaty between the R.S.F.S.R. and Persia of February 26, 1921, providing for the rights of the citizens of the R.S.F.S.R. in Persia and of Persian citizens in the R.S.F.S.R., refers to "Russian citizens" in general, and to Persian citizens residing in "Russia";[168] the right of transit of "Russian" goods through Persia and of Persian goods through "Russia" was mutually agreed upon;[169] postal and telegraph communications were to be resumed between Persia and "Russia." [170] Article 6 reads:

"Both High Contracting Parties agree that in case of attempts made on the part of a third state to . . . use Persian territory as a base for military action against Russia, and in case this endangers the integrity of the boundaries of the Russian Socialist Federal Soviet Republic, or of *states in union with it*, and if the Persian Government, after due warning by the Russian Government, is unable to prevent this danger, the Russian Soviet Government will have the right to send *its* troops to Persia in order to take necessary measures for self-defense." [171]

The general references to "Russian citizens," "Russia," and "Russian Soviet Government," the fact that the expression

[167] *Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1921, p. 186.
[168] Arts. 16–18 (*Sborn. Deistv. Dogov.*, II, 1921, p. 40, IX, 384, L.N.T.S.).
[169] Arts. 19–20 (*ibid*, II, 1921, p. 40).
[170] Art. 21 (*ibid*, II, 1921, p. 41).
[171] *Sborn. Deistv. Dogov*, II, 1921, pp. 37–38. (Italics by author.)

"states in union" was used long before the Soviet Union came formally into existence, and the fact that the Red Army had only one general administration covering the territories of all the republics, so that the expression "its troops" may well include army units from the R.S.F.S.R., the White-Russian S.S.R., the Ukrainian S.S.R. and the Transcaucasian S.F.S.R., suggests that the possibility of applying the provisions of this Treaty between the R.S.F.S.R. and Persia to other Soviet Republics was not precluded.

The same may be said of the Treaty between the R.S.F.S.R. and Afghanistan of February 28, 1921, which speaks of Afghan consular offices in "Russia," and of "Russian" consular offices in Afghanistan,[172] and of the transit of goods through "Russia," thus implying an application to other Soviet Republics.[173]

By degrees, most of the treaties of the individual Union Republics which were not of a local or temporary nature were replaced by treaties of the U.S.S.R.[174]

[172] Art. 5 (*Sborn Deistv Dogov*, I, 1924, p 40)

[173] Art 6 (*ibid*, I, 1924, p 41)

[174] The continuing provisions of the Treaty of Peace with Lithuania were partly superseded by the Treaty of Neutrality with the U.S.S.R. of Sept 28, 1926, and by the Exchange of Notes on the most-favored-nation principle of Sept 4, 1928 (*Sborn Deistv Dogov*, IV, 1928, p 19, and V, 1930, p 70, LX, 145, L.N.T.S.); and those of the Peace Treaty with Poland, by the Conventions of 1924 and 1925 (*ibid*, III, 1927, pp. 38 and 70 respectively, XLIX, 201, L.N.T.S.) The U.S.S.R. entered into a treaty of Commerce with Latvia on June 2, 1927, and with Estonia on May 17, 1929 (*ibid*, IV, 1928, p 31, XLVIII, 321, L.N.T.S., and *ibid*, VI 1931, p 69; XCIV, 323, L.N.T.S., respectively) Of the early treaties concluded with Western European Powers, the Provisional Agreement of the R.S.F.S.R. and the Ukrainian S.S.R. with Austria of December 7, 1921, was superseded by the exchange of notes of September 8, 1923, relative to the application of the provisions of the former to the Union as a whole, and by notes exchanged on February 25–26, 1924, according the Soviet Union *de jure* recognition The Treaty of Commerce between the R.S.F.S.R. and Great Britain of March 16, 1921, was superseded by the Treaty of Commerce of April 16, 1930 (*ibid*, VI, 1931, p 37, CI, 409, L.N.T.S.); the Agreement of the R.S.F.S.R. with Germany of May 6, 1921, by the Treaty of October 12, 1925 (*ibid*, III, 1927, p. 74, LIII, 7, L.N.T.S.), supplemented by the Protocol of December 21, 1928 (*ibid*, V, 1930, p 56) The Preliminary Agreement between the R.S.F.S.R. and Denmark of April 23, 1923, was made applicable to the Soviet Union by the *de jure* recognition accorded to the U.S.S.R. in the exchange of notes of June 18, 1924 (*ibid*, II, 1925, p 12) The Preliminary Agreement between the R.S.F.S.R. and the Ukrainian S.S.R. and Italy of December 26, 1921, lapsed with the conclusion of the Treaty of Commerce and Navigation of February 7, 1924 (*ibid*, II, 1925, p 35) The Provisional Agreement with Norway of September 2, 1921, was superseded by the Treaty of Commerce and Navigation of December 15, 1925 (*ibid*, III, 1927, p 114, XLVII, 10, L.N.T.S.) The same is true as to the treaties concluded between the Soviet Republics and the countries in the Near East. The treaties between the R.S.F.S.R. and Turkey of March 16, 1921, the Transcaucasian S.F.S.R. and the R.S.F.S.R. and Turkey, of October 13, 1921, and the Ukrainian

However, there are still two documents to be found in the list of Soviet treaties, which, although concluded by individual republics, with a country of Western Europe prior to the formation of the Union, have never been superseded by any other agreements, and which formally remain in force. They are the Provisional Agreement between the R.S.F.S.R. and Czechoslovakia of June 5, 1922, and that between the Ukrainian S.S.R. and Czechoslovakia of June 6, 1922 both concluded for "the purpose of establishing economic and commercial relations." These Agreements had no practical application until the recent establishment of diplomatic relations between Czechoslovakia and the Soviet Union.

The Treaty between the R.S.F.S.R. and Mongolia of November 5, 1921, has likewise never been superseded by a treaty with the U.S.S.R., but because of the isolated position of that state actual relations with the Soviet State have been confined to the R.S.F.S.R.

Thus the fifth problem, although simple in principle, called for diplomatic skill on the part of the Soviet authorities to avoid confusion in practices. Until the conclusion of later treaties between the U.S.S.R. and the respective countries, the Soviet Government made the provisions of treaties between the latter and certain Union Republics applicable to other Union Republics, on its own responsibility, for no express legal authorization for this is found.

Summary

This brief analysis of Soviet practice in regard to treaties

S S.R. and Turkey of January 21, 1922, were superseded on March 11, 1927, by the Treaty of Commerce and Navigation concluded between the U S S.R and Turkey (*ibid.*, IV, 1928, p. 100). The Treaty between the R.S F.S R. and Persia of February 26, 1921, was extended to the rest of the Union by the Treaty of Guaranty and Neutrality concluded by the U.S S R. on October 1, 1927:

"The basis for the relations between Persia and the Union of Soviet Socialist Republics shall [continue to] remain the Treaty of February 26, 1921, all the articles and provisions of which shall remain in force and be applied to the whole territory of the Union of Soviet Socialist Republics." (*Ibid*, IV, 1928, p 23; CXII, 275, L N.T S.) On August 31, 1926 (*ibid*, IV, 1928, p. 11), a Treaty of Neutrality was concluded between the U S S R and the High State of Afghanistan superseding the treaty between the R S F.S R and that country of February 28, 1921. In the words of its Final Protocol· "The Government of the High State of Afghanistan expresses its confidence that the friendly relations between the High State of Afghanistan and the Union of Soviet Socialist Republics on the basis of the Treaty of Moscow of February 28, 1921 [between the High State of Afghanistan and the R.S F.S.R], shall continue to grow and to serve for the high purpose of universal peace"

may be summarized from two aspects: (1) the substance of the treaties (their political, economic, and social and humanitarian provisions), and (2) the technique of their conclusion. As to the former, from the political point of view, the Soviet treaties may be divided into three groups: treaties concluded with Western European Powers, treaties with the Baltic States, Finland and Poland, and treaties concluded with the countries in the Near East. Those of the first group serve to illustrate the compromise with the capitalist world which the Soviets were forced to adopt. To quote a pointed remark by Lenin:

"It is obvious that we are going to Genoa not as communists, but as business men. We have to sell, and so do they. We wish to trade so that the benefit be ours, and they wish that it be theirs" [175]

Dictated by such considerations, these treaties do not correctly reflect communist ideas. In the form in which they were signed, they are nothing but a political *"modus vivendi."* The treaties with the Baltic States, Finland and Poland, show signs of attempts to introduce some communistic political ideas and to foster their growth in these states. The emphasis on the principle of self-determination in these treaties evidences this theory. At the same time, political necessity restrained the Soviet authorities from more insistent advances in this direction, for the conditions under which they concluded these treaties, particularly at the beginning, leave no doubt that they were then primarily interested in securing peace with the outside world at any price whatsoever. The treaties with states of the Near East differ from the others in that no element of restraint is found here. Economically, relations with these countries can hardly have been expected to prove a great asset to the Soviets, but politically these states were inexperienced and backward, which offered an opportunity to attempt the introduction of communist ideas on a much larger scale. This in turn resulted in open political ambition to secure communist influence over the masses in these states.

From the economic point of view, Soviet treaties, although all focusing around the principle of the most-favored-nation, may also be divided into three groups. In those of the first, the eco-

[175] Lenin, *Sobr. Soch.*, XVIII, p 21.

nomic clauses secured equal benefits to both Contracting Parties. Such for the most part were the treaties with Western European Powers and Japan. In those of the second group, unusual privileges were accorded to newly formed states having special geographic and historical relations with Soviet Russia, such as the Baltic States, Finland, and, to a certain extent, Poland. In treaties of the third group, the Soviets went out of their way to accord privileges to states which had never previously enjoyed economic equality with Western Powers. Such are those of the Near East and the Orient.

In regard to the treaties of a social and humanitarian nature, striking is the contrast between the policy of the Soviets of refraining from becoming a party to international agreements bearing upon such social problems as labor, traffic in women and children, and the protection of racial minorities, and their readiness to coöperate in efforts primarily for the preservation of human life and health. To a certain degree this seeming inconsistency may be explained, however, by the fact that Soviet views on labor, the position of women, and the rights of minorities, involve elements of no little political significance, while their readiness to coöperate on matters involving human health and life may be well attributed to the fact that international agreements of this nature are not only free from purely political elements, but undoubtedly of great benefit not only to the proletariat of the Soviet Union, but to the toiling masses of other countries as well.

The other aspect—the technique of treaty making—may be analyzed in regard to the process of the conclusion of treaties, and in regard to their form. As to the process itself, the Soviets follow in almost every detail general international practice. So, too, the forms of international agreements entered into by the Soviets are the same, and as varied as those found in the records of non-communist states. For a non-communist this may be attributed to the fact that the Communist State for practical reasons cannot disregard the traditional routine of treaty making as yet; while communists may point to it in defense against accusations charging them with novel aspirations entirely at variance with the political aims of other states.

Chapter X

PACIFIC SETTLEMENT OF INTERNATIONAL CONTROVERSIES

International Comity

As compared with the pre-World-War practice, the present endency is to prevent the inception of international disputes, ather than to set up instrumentalities for their pacific settlement. The most effective means to this end so far discovered are nternationl coöperation and organization. It is only upon the ailure of these devices to prevent conflicts that the old methods f amicable settlement are now resorted to.

League of Nations

An analyisis of the Soviets' practice in this respect may be roadly divided into two separate studies: one of their relations vith the League of Nations, and other coöperative organizations, nd the other of their attitude towards methods for amicable setlement of disputes, such as negotiation, good offices and mediation, conciliation, Commissions of Inquiry, the Permanent Court of Arbitration at The Hague, and the Permanent Court f International Justice. As is well known, the Soviet Union is ot a member of the League of Nations. Since, on the one hand, he League was created "*in order to promote international* oöperation and to achieve international peace and security,"[1] nd, on the other hand, the Soviets have never failed to emphaize their desire for such peace,[2] the inconsistency is self-evident. The reason seems to lie in the interpretation of the quoted ormula. While for the non-communist state "international coöperation" and "international peace and security" are the same hing, for the Soviets they are quite distinct.

It would be erroneous to assume that the reason the Soviet Union is not a member of the League is insufficient strength, either potential or material. The only reason is the politically

[1] Preamble to the Covenant of the League of Nations.
[2] *Infra*, pp. 302ff.

disadvantageous position in which the Soviet Union would immediately find itself after joining the League. Being the only communist state so far, it would be in a permanent minority. Whatever the fear of the communists, there is no reason to believe in international armed aggression under the auspices of the League, but the possibility of political and economic compulsion cannot be overlooked. Bukharin in 1926 voiced the opinion of the Soviet authorities when he said:

"What is usually regarded as a positive result of the activity of the League of Nations, such, for instance, as the conclusion of a few commerce agreements, or the admission of Germany to the capitalistic system of Europe, actually is nothing but a further step toward ramification and consolidation of European capitalist forces, directed partly against American competition, but mainly against the proletariat, against the interests of the working masses, against the Soviet Union, and against colonies and semi-colonies." [3]

The diplomatic document best illustrating the attitude of the Soviets toward the League of Nations is the Note of the People's Commissariat for Foreign Affairs of the R.S.F.S.R. sent to the League of Nations, March 5, 1923, in acceptance of an invitation to participate in the conference on naval disarmament. The Soviet Government stated that while accepting the invitation it remained firm in its belief that the League was nothing but a coalition of states attempting to usurp power from other states, and "an institution serving as a disguise for the imperialistic policies of certain great powers." [4] Consequently it is only logical that the Soviet Union prefers the method of coöperation with individual states rather than *en bloc.*

Then, too, the communist theories on such vital issues as the conception of state, private property, the rôle of the proletarian masses, and economic redistribution are diametrically opposed to those of the members of the League. To yield to the League would mean, for the Soviet Union, giving up some of its principles, and would involve not only loss of prestige before the proletariat of the world, but betrayal of the whole Marxian philosophy. To

[3] *Puti Mirovoi Revolutsii*, I, p 160

[4] Khuchnikov i Sabanin, *Mezhdunarodnaia Politika Noveishogo Vremeni v dogovorakh, notakh i deklaratsiiakh*, III (I), p 238.

disagree with the League—and this would happen all too frequently—would mean a conflict with all other members of the League. From this point of view, the Soviets consider it far preferable to deal separately with other states than to subject themselves to the provision of Article 16 of the Covenant of the League of Nations.[5] The argument that the treaties of non-aggression concluded between the Soviet Union and the states which are members of the League,[6] automatically make the provision of the article indirectly applicable to the Soviet Union is hardly convincing for the Soviets. Indeed, on the one hand, since the League, *per se*, is expected not to initiate any aggression, and on the other, since a state which is a party to an agreement of non-aggression with the Soviets is bound not to resort to arms, the danger of the Soviet Union being involved in conflict with the League is slight, at least for the time being. This explains why the Soviet Union, instead of joining the League of Nations, prefers a system of separate individual agreements.

Technical Bodies

International organizations of a technical rather than political nature, have received the hearty coöperation of the Soviets, even though sponsored by the League. Such are the Universal Postal Union, the International Red Cross and the Health Commission of the League of Nations.

Amicable Means for Settlement of Disputes

That the Soviets constantly resort to diplomatic negotiations to avoid friction, and reach compromises to prevent resort to forcible means of coërcion or redress is evident from their treaties.[7] Such negotiations have also been conducted orally, by exchange of notes and other communications.[8]

Good offices refer to advice or suggestions on the part of a third power to induce states in controversy with each other to attempt to settle their differences amicably. Mediation refers to actual diplomatic intervention on the part of a third state which assumes a leading rôle in the conduct of the negotiations between the states at variance. While differing as to the part played by

[5] It reads "Should any member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15 it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League "

[6] Appendix XXIV

[7] See Chapter IX; also Appendix XXIV.

[8] See Kliuchnikov i Sabanin, *as cited, supra*, p. 293

the third state, both good offices and mediation are essentially similar: both are initiated by a third state, the sole motive of this state is good will, and neither implies any element of compulsion.

From what has been said about the relations between the Soviet Union and the League of Nations there would seem to be little possibility that the Soviets would cooperate with other states bent on mediation. Yet when on January 22, 1919, the Great Powers sent a note to the Soviet Government inviting it to Prinkipo for the purpose of bringing about an understanding between the Bolshevists and their antagonists, and to stop the civil war in Russia, the Soviets immediately sent a radiogram informing the Great Powers of their readiness to participate in the proposed conference.[9] When this conference proved a failure, another attempt was made: in March, 1919, Mr. Bullitt, unofficial agent of the United States of America, went to Moscow to discover the attitude of the Soviets towards the possibility of coming to terms with the anti-Bolshevist forces. The result of his visit to Russia was that on March 12th a draft treaty was drawn up "by Representatives of the Soviet Government and William Bullitt, in Russia on behalf of President Wilson." In this draft the Soviets expressed their readiness to commence negotiations with a view to concluding peace with the anti-Bolshevist armies.[10]

Another illustration of Soviet willingness to accept mediation was the reply of the Soviet Government to the French Government's offer to act as intermediary in settling the difficulties between the Soviet Union and Switzerland in 1926. The Soviet authorities expressed their readiness to lift the boycott which they had declared against Switzerland, provided that certain conditions were agreed to.[11] The readiness with which the Soviets responded to these offers of mediation suggests the conclusion that they recognized the value of this method of settling international difficulties. However, since the actual reasons for this attitude were: 1) the extremely difficult political situation of the Soviets due to exhaustion resulting from the Civil War and

[9] Radiogram of Feb 4, 1919 (*10 let vneshnei politiki S.S.R.*, pp. 64ff.).
[10] *Sovetskii Soius v Bor'be za Mir*, pp. 66ff.
[11] Khuchnikov i Sabanin, *as cited*, p 337.

the disorganization of the country, and (2) their illusory confidence that Europe was on the eve of a Pan-European proletarian revolution, the assumption is justified that the recognition of the value of good offices and mediation was manifested by the Soviets not *ex principio*, but as a diplomatic move dictated by necessity.

There is no evidence that the Soviets have resorted to the fact-finding Commissions of Inquiry recommended at the Hague Conferences of 1899 and 1907 for cases where the parties had been unable to come to an agreement by means of diplomacy.[12]

International arbitration refers to a quasi-judicial method of settling international disputes between states "by judges of their own choice and on the basis of respect for law."[13] There are several instances proving that the Soviet Union adheres to the international practice in this regard. Thus, Article 14 of the Treaty of Peace with Estonia of March 2, 1920, provided:

> "The decision of any questions of public or private law which may arise between citizens of the Contracting Parties, and the settlement of certain special questions between the two Governments . . shall be carried out by special Joint Commissions which shall be formed immediately upon the ratification of the present treaty."[14]

Of interest also is the Agreement with Roumania of November 20, 1923, which provided for mixed commissions for the purpose of "preventing and settling conflicts that might arise on the Dniestr River." This Agreement provided for the establishment of one Central Mixed Commission and a number of local commissions.[15] Soviet treaties entered into with the countries in the Near East provide for the settlement by arbitration of disputes which may arise in the frontier zones.[16] It is true that these instances differ from those contemplated in the Hague Conventions in the element

[12] *Brit. & For State Papers*, XCI, pp 975ff, and C, pp 300ff, respectively.

[13] Art 15, I Hague Convention, 1899, and Art 37, I Hague Convention, 1907 (*The First and Second International Peace Conferences held at The Hague, 1899 and 1907*, pp. 10 and 59, respectively)

[14] *Sbornik Deistv Dogov*, I, 1924, p 203, XI, 30, L N T S See also Annex to Art. 7 of the same treaty (*ibid*, I, 1924, p 199) and Art 5 of the Treaty of Peace with Finland of Oct 14, 1920 (*ibid*, I, 1924, p 174; III, 6, L N T S)

[15] *Ibid*, I–II, 1928, pp 191–194 According to Art 10, the decisions of these local mixed commissions are final and must be executed, with the exception of cases involving compensation

[16] *Supra*, p. 268 Appendix XXIV.

of permanency evident here. Their ultimate purpose, however, proves that the Soviets do not reject the benefits of the principle of arbitration, provided that the initiation is not taken away from the states involved in the issue. It being the general rule, furthermore, that the states themselves determine whether the issue is of a nature permitting arbitration, the Soviets take full advantage of all of these characteristics of arbitration. As Korovin correctly says, the Soviets in their practice admit arbitration, but only in controversies which are either technical in their nature, or which involve private rights.[17]

As to the attitude of the Soviet Government toward arbitration in cases of political conflicts between the U.S.S.R. and non-communist states and also toward the Permanent Court of Arbitration at The Hague, it is quite obvious that the Soviet Union cannot resort to this method of pacific settlement for reasons of a fundamental nature.[18] These are revealed in a statement by Litvinov at The Hague on July 12, 1922:

"Commander Hilton Young had asked whether it would be impossible to find a single impartial judge in the whole world. It was necessary to face the fact that there was not one world but two,—a Soviet world and a non-Soviet world. Because there was no third world to arbitrate, he anticipated difficulties. One party would put forward *a communist judge, e.g., the Chairman of the Third International*, while the other, perhaps, would propose the Chairman of the League of Nations . . . The division he had mentioned existed, and with it existed a bias and a hatred, for which the Russian Government must decline the responsibility. Only an angel could be unbiased in judging Russian affairs. . . ." [19]

This suggests the conclusion that the attitude of the Soviet Government toward the Permanent Court of International Justice must be similar to its attitude toward arbitration. Moreover, the difference between arbitration and judicial settlement supports this conclusion. Not trusting international arbitration, where the differences between states are settled by judges of their own choice, the Soviet Union could hardly submit itself to a judicial settlement where the judges were permanent, *i.e.*, not selected by

[17] Korovin, *Sovremennoe Meshdunarodnoe Publichnoe Pravo*, p. 137.
[18] *Ibid.*, p. 137.
[19] *Conference at The Hague. June 26–July 20, 1922 Minutes and Documents*, p 126.

the parties. When the Eastern Karelian case was brought before the Permanent Court of International Justice in 1923, the Soviet Government was duly informed of the fact. Its reply left no doubt that the Soviets recognized no competence in the Court to interfere with Soviet affairs, and that the coöperation of the Soviet State with the Court was utterly impossible·

"The Russian Government categorically refuses to take any part in the examination of this question by the League of Nations or by the Permanent Court. Apart from considerations of law, . . . the Soviet Government is compelled to affirm that it cannot consider the so-called League of Nations and the Permanent Court as impartial in this matter. . . ." [20]

Non-Amicable Measures Short of War

Opposed to amicable methods for the settlement of international disputes are non-amicable or forcible measures short of war. Aside from serving to prevent open conflict between states, they are also measures of self-protection. Textbooks on international law list retorsion, reprisals, embargo, pacific blockade, boycott, and intervention among such measures.

Retorsion

Retorsion is a species of retaliation in kind It consists in treating a foreign state or its citizens, which have committed acts which, while not illegal, are unfair or injurious, in a similar manner. Essentially a remedy for political grievances, retorsion is an act not trangressing the rules of international law in any way It is a method of securing fair treatment, rather than a means of punishment or vengeance An illustration of the Soviet attitude toward this principle is found in the conflict which arose in 1918 between the R.S.F.S.R. and Great Britain. Several communists had been arrested in London, among them Litvinov and Chicherin As a protest against the detention of these persons, and as a measure calculated to induce their release, the Soviet Government ordered that no permits to leave the country be given to British subjects in Russia.

Reprisals

Reprisals are induced by violations of law or international delinquencies. They take many forms, ranging from simple retaliatory measures to acts just short of war, which, however, are not necessarily considered formal acts of war by either state.

[20] *Publications of the Permanent Court of International Justice*, Series C, No 3, Vol. I, p 69.

Reprisals differ from retorsions in this, that while in resorting to the latter, a state ordinarily only requites unfriendly conduct by an act of the same nature, without transgressing the rules of international law, in making reprisals upon the persons or things belonging to the offending state, a state seeks solely to secure satisfactory reparation for the offense committed, without regard to conformity with the law. An instance of reprisals in Soviet practice is furnished by the immediate suspension of the work of the Soviet Trade Delegation in Berlin as a protest against the raid and search of their quarters on May 3, 1923. It was not until July 29th that the controversy was brought to an end by the signature of a protocol in settlement of the issue.[21] Another illustration is the case of Diamandi, the Roumanian Ambassador in Russia, who was arrested as a protest against the invasion of Bessarabia by Roumanian troops in 1918.[22] Simultaneously with his arrest, all the Roumanian gold which had been deposited during the war with the Russian Government was sequestrated by the Soviets.[23]

A very recent illustration is found in the retaliatory measures taken by the Soviets as a result of the embargo declared by Great Britain against Russia on April 19, 1933. The Decree of the Council of Peoples' Commissaries of the U.S.S.R. of April 22, 1933, instructed "all chiefs of port to charge vessels under the British flag higher rates as port duties, instead of the preferential duties British ships had paid during the period of validity of the Soviet-British Agreement." [24]

Another measure resorted to for obtaining redress, which has a hostile character and yet falls short of actual war is embargo. In its special sense, an embargo is a detention of vessels in port, whether they be national or foreign, whether for political purposes or by way of reprisal. In the wider sense of the term, it includes other related measures of reprisal aiming at economic compulsion. The Soviets are fully aware of this principle of international law. On October 20, 1930, a Decree was passed by the Council

[21] Kliuchnikov i Sabanin, *as cited*, pp. 313–314.
[22] *Supra*, p 187
[23] Korovin, *as cited*, p. 140
[24] *New York Times*, April 22, 1933.

of Peoples' Commissaries which, though making no express mention of embargo, provided that special measures, which actually amounted to embargo, be taken in regard to "the countries which establish for the trade with the U.S.S.R. a special régime of restrictions which, not being extended to other countries . . . hinder the normal importation of Soviet goods." [25] When on April 19, 1933, the British Government declared an embargo against the Soviet Union,[26] as a measure to bring about commutation of prison sentences imposed on two British engineers, tried in Moscow, the Soviet Government reacted by giving practical application to the Decree of October 20, 1930. On April 23, 1933, the Soviets adopted counter-restrictive measures, prohibiting buying in Great Britain, and banned the use of ships of that country:

"First—Foreign trade organizations in Soviet Russia are prohibited from giving any orders to Great Britain or effecting any purchases with that country.

"Second—Sovfracht, the Soviet Government's ship chartering organization, is prohibited from chartering any vessels sailing under the British flag.

"Third—Introduction of restrictive rules for British goods in transit via Russia.

"Fourth—Transit and reëxport organizations are ordered to reduce to the utmost utilization of British ports and bases." [27]

All these measures were to remain in force during the continuance of the embargo applied by the British Government to imports to Great Britain of main items of Soviet export

Pacific Blockade

Another form of redress to which nations sometimes resort, and which is yet not considered war, is pacific blockade While more especially denoting prevention of communication via water by naval forces, such a blockade is not confined to a seaport or portion of a coast, or the mouth of a river, but may be applied to obstruct entry into or departure from any place Resorted to as a means of redress short of war, pacific blockade implies no intention to get possession of the blockaded place. The data relative to the Soviet attitude toward pacific blockade are very

[25] For text see Appendix XXI.
[26] *London Times*, April 20, 1933.
[27] *Izvestia*, April 23, 1933

inconclusive. The only official pronouncement on the subject is the "Protest Against the Blockade and Support of the Russian Counter Revolution" addressed by the Soviet Government on April 18, 1919, to the "Toilers of the Entente Countries." Accusing the governments of these countries of having resorted to such measures, the Soviets admitted the effectiveness of the blockade:

". . . your Governments were never tired of declaring that the blockade, depriving Russia of raw material, fuel, transport facilities and supplies, in a word, implying incredible sufferings for the whole nation, would be continued with unremitting perseverance." [28]

The appeal "Lift the blockade! That is the only way to end famine in Russia!" [29] undoubtedly implies a protest against blockade. However, there being no instances where opportunity was afforded the Soviets themselves to resort to blockade, this protest by Chicherin must be taken merely as a political appeal dictated by necessity, and not as a juridically grounded protest throwing light upon the communist reaction to this principle of international law.

The next form of non-amicable settlement of disputes to be discussed is boycott. While retorsion, reprisals, and pacific blockade may justly be viewed as means available only to comparatively strong states, an international boycott is a more effective means of self-protection and defense for weak states. The Soviet Government has a very flexible and effective means of exercising this sort of pressure through its monopoly of foreign trade.[30] Prior to the World War, the theory prevailed that boycott was inconsistent with the fundamental principles of international law. With the World War, however, this theory changed, and boycott is now considered one of the lawful modes of non-amicable settlement of international difficulties between states. The fact that the Soviet Government recognizes this is most convincingly proved by the promulgation of the Decree of June 20, 1923, by which an economic boycott was declared against Switzerland as a protest against the assassination of Vorovsky, the Soviet

[28] *Sovetskii Solus v Bor'be za Mir*, p 72.
[29] *Ibid*, p. 74
[30] *Cf* Korovin, *as cited*, p 139.

delegate to the Lausanne Conference.[31] It was not until April 14, 1927, that a protocol was signed between the USSR and Switzerland in which both governments declared "the conflict existing between their countries liquidated, and reciprocal restrictive measures repealed." [32]

Intervention

The last measure of non-amicable settlement of international disputes short of war to be considered is intervention. The theory, advanced as early as Grotius, that intervention was not illegal when undertaken for the purpose of liberating the masses from tyranny,[33] is perfectly acceptable to the Soviets. Essentially a manifestation of class differences for the communists, intervention is admissible for them in principle in spite of the fact that when materialized it is nothing but a forced subjection of the weak to the strong. From this point of view the Soviet protests against the Allied intervention in 1918–1921 must be taken not as an objection to the principle, but as a political move which was expected to help the Red forces in their struggle with the anti-Bolshevist armies.

This leaves for analysis the final resort for the non-amicable settlement of disputes—war. Prior to proceeding with a study of the Soviet reaction to the international rules governing war, a brief study must be made of the Soviet efforts for universal peace—*a situation in which international disputes can be settled* only by means short of war. Whatever one's attitude toward the political aspirations of the Soviet Union, it is impossible to deny the fact, recorded in diplomatic documents, that the Soviets have unceasingly attempted to secure some means of guaranteeing international peace.[34] Irrespective of the real cause for this persistence, it is undeniable that despite innumerable complications and disillusionments, the Soviet Union has seldom failed to demonstrate these aspirations in the post-war international

Soviet Efforts for Peace

[31] *Sobr Uzak i Rasp. RSFSR*, 1923, I, pp 1039–1040 *Cf supra*, p 188

[32] *Sborn Deistv Dogov*, IV, 1928, p 27 *Cf.* also official announcement of the People's Commissariat for Foreign Affairs of the USSR of Feb 14, 1926, in regard to settlement of the conflict. (In Khuchnikov i Sabanin, *as cited*, p. 337.)

[33] Grotius, *De Jure Belli ac Pacis*, Bk 2, Ch XXV, pp 636ff (Barbeyrac, Amstelædami, 1720)

[34] *Cf.* Kliuchnikov i Sabanin, *Mezhdunarodnaia politika novcishogo vremeni v dogovorakh, notakh i deklaratsiiakh* I–III; Tamin, *10 let vneshnei politiki S.S.S.R*, 1917–1927, *Sovetskii Soiuz v Bor'be za Mir*

concert politic. The diplomatic documents of the Soviet Union bearing testimony to these attempts at world peace may be divided into four groups: (1) the peace notes, appeals, and declarations sent by the People's Commissariat for Foreign Affairs of the R.S.F.S.R. to various foreign governments, foreign toiling masses at large, and to the working masses of individual countries during the period from the November Revolution of 1917 to the beginning of 1921; (2) the documents relative to the participation of the Soviets in the Conferences for settlement of post-war problems; (3) the documents relative to the participation of the Soviets in the disarmament conferences, and (4) the Soviet treaties and pacts on neutrality and non-aggression.

Peace Notes 1917–1921

Chronologically the first document of the first group was the Decree on Peace passed by the Council of Peoples' Commissaries on October 28, 1917. This was actually a political declaration inviting the nations at war to begin immediate negotiations for a "just and democratic peace." [85] Numerous other notes and declarations followed throughout the period,[86] appealing to all the

[85] *Sobr Uzak i Rasp. R.S.F.S.R.*, 1917–1918, I, pp. 2–3

[86] A list of the most important of these documents follows: (1) Decree of Peace, adopted unanimously at a meeting of the All-Russian Convention of Soviets of Workers', Soldiers' and Peasants' Deputies on November 8th, 1917. (2) Note from the People's Commissariat for Foreign Affairs of the R.S.F.S.R. to the Allied ambassadors, Nov. 22, 1917 (3) Appeal by Council of Peoples' Commissaries of the R.S.F.S.R. to the Peoples of the Belligerent Countries with a proposal to join in the negotiations for an armistice, Petrograd, November 28th, 1917 (4) Appeal of Council of Peoples' Commissaries of the R.S.F.S.R. to all Mohammedan Workers in Russia and the East, Dec. 7, 1917 (5) Appeal from the People's Commissariat for Foreign Affairs of the R.S.F.S.R. to the Toiling, Oppressed, and Exhausted Peoples of Europe, Dec 19, 1917 (6) Declaration made by the Delegation of the R.S.F.S.R. at the First Plenary Session of the Peace Conference in Brest-Litovsk, Dec. 22, 1917. (7) Note from Commissariat for Foreign Affairs of the R.S.F.S.R. to the Peoples and Governments of Allied Countries, Dec. 29, 1917. (8) Declaration made by the Soviet Delegation at a Session of the Political Commission of the Brest-Litovsk Peace Conference, Feb 10, 1918 (9) Note from the People's Commissariat for Foreign Affairs of the R.S.F.S.R., to the toiling masses of England, America, France, Italy, and Japan, Aug. 1, 1918 (10) Note from Chicherin, People's Commissary for Foreign Affairs, to D. C. Poole, American Consul in Moscow, Aug. 6, 1918 (11) Note from Chicherin, People's Commissary for Foreign Affairs of the R.S.F.S.R. to Woodrow Wilson, President of the United States of America, Oct 24, 1918. (12) Proposal of Armistice to the Allies Resolution of the Sixth All-Russian Extraordinary Congress of Soviets, passed at the Session of Nov 8, 1918 (13) Peace Proposal by Government of the R.S.F.S.R. to Allied Powers and the United States of America Note from Litvinov, Deputy People's Commissary for Foreign Affairs of the R.S.F.S.R., to Woodrow Wilson, President of the United States of America, Stockholm, Dec. 24, 1918 (14) Peace Proposal of Government of the R.S.F.S.R. to the Government of the United States of America: Telegram from Chicherin to the Secretary of State of the United States of America, Jan 12, 1919 (15) Peace Proposal of

nations of the earth but especially to those of the East and Near East to support its call for peace.[37] As long as the civil war continued, all these attempts to achieve peace remained fruitless However, with the victory of the Soviets over the anti-Bolshevist armies, the cessation of the intervention by the Allies, and the formation of the independent Baltic Republics, the countries of Western Europe began to consider the possibility of the resumption of normal relations with the Soviet Government.

Post-War Conferences

The documents of the second group comprise those relative to the participation of the Soviets in the conferences that were held after the resumption of relations with Western Powers. The first of these is the protest of the R.S.F.S.R. Government of July 19, 1921, against its exclusion from participation in the conference of the Pacific Powers and Powers with special interest in the Pacific, which was to be held at Washington.[38] In this protest the Soviet Government emphasized its attitude toward inter-

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the Government of the R S.F.S R. to the Governments of Great Britain, France, Italy, Japan and the United States of America, Jan 17, 1919 (16) Reply of People's Commissary for Foreign Affairs of the R S F S R to the invitation of the Allied and Associated Powers to the proposed Conference at Prinkipo, Feb 4, 1919. (17) Draft Treaty drawn up by Representatives of the Soviet Government and William Bullitt, in Russia on behalf of President Wilson, March 12, 1919 (18) Protest against Blockade and Support of Russian Counter Revolution. Appeal by Chicherin to the Toilers in the Entente Countries, April 18, 1919 (19) Appeal by Chicherin to the Toilers in the Entente Countries with regard to the imperialist policy of their Governments, Jan 28, 1920

[37] *Cf.* The Appeal to All-Mohammedan Workers in Russia of Dec 7, 1917 (in *Sovetskii Soiuz v Bor'be za Mir*, p. 31).

[38] Chronologically these documents were (1) Protest of Government of the R.S F S R against its exclusion from participation in the Washington Conference Telegram from Chicherin, People's Commissary for Foreign Affairs, to the Governments of Great Britain, France, the United States of America, China and Japan, on July 19, 1921. (2) Protest of the Government of the R S F.S R against its exclusion from participation in the Washington Conference Telegram from Chicherin, to the Governments of Great Britain, France, Italy, Japan and the United States of America, Nov 2, 1921 (3) Telegram from Chicherin, People's Commissary for Foreign Affairs of the R S F S R, sent to the Supreme Council on Jan. 8, 1922. (4) Telegram from Chicherin to Bonomi, Prime Minister of Italy, Jan 8, 1922. (5) Speech by Chicherin, Vice-chairman of Russian Delegation, at First Plenary Session of Genoa Conference, Genoa, April 10, 1922 (6) Memorandum of Russian Delegation to Genoa Conference, Apr 20, 1922 (7) Note from Chicherin, Vice-chairman of Russian Delegation to Genoa Conference, to Lloyd George, First Delegate of British Delegation, Apr 20, 1922 (8) Reply of the Russian Delegation at Genoa Conference to the Memorandum of Eight Delegations sent on May 2, 1922. (9) Resolution of the All-Russian Central Executive Committee on the Report of the Work of the Russian Delegation at Genoa and the Treaty with Germany signed at Rapallo, passed on May 18, 1922 (10) Speech of Litvinov, Chairman of Russian Commission to Hague Conference, at the Session held on July 19, 1922

national conferences touching the interests of Soviet Russia, and insisted that in the solution of these problems the views of the Soviets should be taken into consideration.[39] Although this protest met with no response, the Entente Governments soon comprehended that the political and economic problems confronting post-war Europe could not be solved without the participation of the Soviets. The result was that after 1921 the R.S.F.S.R. was drawn into the discussions concerning the post-war settlement of international affairs, including the Bolshevist Revolution itself. The outstanding document of this period was the Memorandum of the Soviet Delegation submitted to the International Economic Conference at Genoa on April 20, 1922. In the opinion of the Soviet delegation there were three principles, fundamental to agreement on controversial, post-war problems, that retarded the stabilization of world peace. These principles were:

"(1) Recognition of the full sovereignty of every nation, entailing [recognition of] its own system of property, economy, and administration; (2) the legal, juridical, and administrative guarantee of personal and property rights of those foreigners desiring to visit Russia for economic activities, and (3) the recognition of the principle of reciprocity in the execution by all Governments of their obligations and in the compensation for losses suffered by foreign citizens. . . .[40]

This was essentially an appeal for *de jure* recognition as the price of Soviet coöperation with other powers on behalf of universal peace. The refusal of the Great Powers to deal with the Soviets on the conditions proposed is well known, and calls for no further comment. In spite of the *de jure* recognition which was later accorded the Soviets by these Powers, the difference between communist political philosophy and that of the non-communist states has proved too vast to insure the full benefit of attempts at coöperation.

Disarmament Conferences

In the search for effective means to secure permanent peace for the world, the idea of disarmament was advanced. The documents relative to Soviet participation in international conferences on disarmament constitute the third group of diplomatic acts

[39] Text in Appendix XV (Also Kliuchnikov i Sabanin, *as cited*, pp 106ff)
[40] *Sovetskii Soiuz v Bor'be za Mir*, p 138.

bearing testimony to Soviet aspiration for peace.[41] An ardent sponsor of the idea of disarmament, the Soviet Government proposed the convocation in Moscow of a Conference on the reduc-

[41] The most important documents of this group are (1) Moscow Reduction of Armaments Conference (*a*) Proposal by the Government of the RSFSR for the Convocation in Moscow of a Conference on the Reduction of Armaments Note from M Litvinov, Assistant People's Commissary for Foreign Affairs of the RSFSR, to Ministers for Foreign Affairs in Estonia, Finland, Latvia, and Poland, June 12, 1922 (*b*) Speech of M Litvinov, Chairman of Russian Delegation, at First Sitting of Moscow Disarmament Conference, Dec 2, 1922 (*c*) Articles of the Draft Convention of Non-aggression and Arbitration finally passed on the Proposal of the Soviet Delegation at a Session of the Bureau of the Moscow Disarmament Conference on Dec 8, 1922 (*d*) Declaration of Russian Delegation at the Final Sitting of the Moscow Disarmament Conference (Military and Technical Commission), Dec 12, 1922. (2) Consent of Government of RSFSR to attend Conference on Reduction of Naval Armaments Note sent by People's Commissariat for Foreign Affairs to Secretary General of League of Nations, Mar 15, 1923 (3) Reply of Chicherin, People's Commissary for Foreign Affairs, to Invitation from President of the League of Nations to take part in Preparatory Disarmament Commission, Jan 16, 1926 (4) Note From Chicherin to Sir Eric Drummond, Secretary General of the League of Nations, with regard to the Question of the Participation of the USSR in the Work of the League of Nations on Disarmament, April 7, 1926 (5) Extract from Resolution of the Fourth USSR Congress of Soviets on Government Report, Moscow, Apr 19, 1927 (6) Session of Preparatory Disarmament Commission (*a*) Statement by Litvinov regarding Fourth Session of Preparatory Disarmament Commission made to Representatives of Soviet and Foreign Press, Nov 22, 1927. (*b*) Declaration by USSR Delegation pronounced by M. Litvinov at Session of Preparatory Disarmament Commission on Nov 30, 1927 (*c*) Memorandum of Soviet Delegation, Nov. 30, 1927 (*d*) Report by M Litvinov to Fifteenth Congress of Russian Communist Party on Work of Soviet Delegation at the League of Nations Preparatory Disarmament Commission (*e*) Memorandum explaining the Draft Convention for General, Complete, and Immediate Disarmament (*f*) Speech by M Litvinov on Report of Committee of Arbitration and Security, Mar 16, 1928 (*g*) Speech by M Litvinov at Third Sitting of Preparatory Disarmament Commission with Regard to Draft Convention for Complete Disarmament submitted by the Delegation of the Union of Socialist Soviet Republics, Mar 19, 1928 (*h*) Annex to M Litvinov's Statement of Mar 19, 1928 (*i*) Reply of M Litvinov to Attacks on Government of USSR and Soviet Draft Convention for Complete Disarmament at Seventh Sitting of Preparatory Disarmament Commission, March 22, 1928 (*k*) Speech by M Litvinov on Soviet Draft Convention for Partial Reduction of Armaments at Ninth Sitting of Preparatory Disarmament Commission, March 23, 1928 (*l*) Speech by M Litvinov on Refusal by Preparatory Disarmament Commission to Consider Soviet Draft Convention for Disarmament at Ninth Sitting of Preparatory Disarmament Commission, Mar 23, 1928 (*m*) M Litvinov's Final Declaration at the Closing Session on Mar 24, 1928 (*n*) Draft Convention for the Reduction of Armaments submitted on Mar. 23, 1928, to the Disarmament Commission by the Delegation of the Union of Socialist Soviet Republics (*o*) Report to Third Session of the Central Executive Committee of the USSR by M. Litvinov, Chairman of Soviet Delegation to Fifth Session of Preparatory Disarmament Commission (*p*) Resolution of Central Executive Committee of the USSR on Report of Chairman of the Soviet Delegation to Fifth Session of Preparatory Disarmament Commission, April 21, 1928 (*q*) Litvinov's Declaration at the Sixth Session of the Preparatory Disarmament Commission, April 19, 1929 (*r*) Litvinov's Speech at the Sixth Session of the Preparatory Disarmament Commission, May 6, 1929 (*s*) Letter from M Litvinov, Acting People's Commissary for Foreign Affairs for the USSR, to Mr Loudon, President of Preparatory Disarmament Commission, Dec 5, 1928. (*Sovetskii Soiuz v Bor'be za Mir*, pp 165ff)

tion of armaments, for which invitations were sent to Poland, Finland, Latvia, and Estonia. In spite of the failure of this conference,[42] the Soviet Government continues firm in its belief in the ultimate value of disarmament, and at every conference for the limitation of armaments has consistently advanced its desire for universal disarmament, as well as its general appeal for world peace. The Soviet attitude in this respect is most clearly seen in the Declaration of the U.S.S.R. delivered by Litvinov at the Session of the Preparatory Disarmament Commission of November 30, 1927, which unreservedly suggested complete disarmament.[43] The principles outlined therein were again advanced in April, 1932, when the General Disarmament Conference resumed its work. Litvinov emphasized the fact that in principle the Soviet Union stood by its original proposal of complete disarmament, and set forth the following three fundamental principles, by adherence to which the work of the Conference might result in at least a partial reduction of armaments: (1) a change of the term "limitation" of armaments, to "reduction" of armaments, which would mean, in his estimation, the reduction of existing armed forces; (2) the application of the reduction to all kinds of war materials and munitions; (3) the discussion of the whole problem, not from the point of view of the safety of states, but on the basis of a ratio of reduction in proportion to the actual military strength of the nations.

This is the official testimony of the Soviet attitude in regard to disarmament. However, there remains to be considered its

[42] The idea of proportional disarmament, suggested at this Conference, never materialized, because the delegates of the bordering countries refused at the last moment to sign the agreement

[43] For text see Appendix XX. Of interest in this respect is the Speech by Litvinov, the Soviet Delegate, delivered on November 22, 1927, at this same Disarmament Conference, in which the hope for universal peace through disarmament, cherished by the Soviets, was opposed by the fear of another war

". . We live in times when the outbreak of new wars is not a theoretical, but a real threat. This is not only our opinion, but this fear has been expressed lately also by many authoritative statesmen in capitalistic countries The air of the approaching war is felt everywhere" (*Sovetskii Soiuz v Bor'be za Mir*, p 193)

Likewise significant is the fact that this project was submitted with *an a priori* assurance that it would not be accepted by non-communist countries (*Cf* the Theses of the Sixth Congress of the Comintern, Aug 17–Sept 1, 1928, *Kommunisticheskii Internatsional v Dokumentakh, 1919–1932*, p 825). These admissions call for no further comment regarding the conflict between the theoretic value of the Soviet idea of complete disarmament, and the concrete impossibility of its realization in the near future.

theoretical foundation. From what has been said above, disarmament appears to be the ideal of socialism. Concretely this ideal can be reached only in a socialist, class-less world where there is no longer need for war. At the same time the chance is slight that this ideal socialistic community will materialize by a process of peaceful evolution. It would be naïve to think that anything less drastic than an armed revolution could change the present capitalistic order of the world into the socialistic commonwealth. For a Marxist, this ideal commonwealth can materialize only after a period of the dictatorship of the proletariat. This dictatorship involves an authority based on force The force is represented, as in almost every dictatorship form of revolution, by the army. The strength of the army depends upon its arms and equipment. It is of interest to note in this connection a statement by Lenin:

"The permanent army everywhere and in every country is used not so much against external enemies as against internal ones." [44]

The armed forces of the Soviets are no exception to this. As an instrument in the hands of the dominating proletarian class pursuing revolutionary aims, the Red Army cannot serve for purposes other than those dictated by the proletarian class. Consequently, when the term "disarmament" is applied to the conception of the Soviet State, the contradiction is self-evident Complete disarmament means actually taking the weapons away from those who carry them. By so doing the army is deprived of the essential source of its force With the disappearance of this force, the conception of the dictatorship *per se* is reduced to *nil*. It was partly because of this that Lenin said:

"Our motto must be *the armament* of the proletariat for the purpose of expropriation and disarmament of the bourgeoisie." [45]

[44] Lenin, *Sobr. Soch*, VII, p. 27.

[45] *Ibid*, XIII, p 451 (italics by author) *Cf* cl. 60 of the Theses of the Sixth Congress of the Comintern, Aug. 17-Sept. 1, 1928, which reads in part:

"The October [Bolshevist] revolution has proved to every honest communist the absolute necessity of the armament of the proletariat. The replacement of the slogan 'armament of the proletariat' by that of 'disarmament' at present can serve only as a counter-revolutionary slogan" (*Kommunisticheskn Internatsional v Dokumentakh, 1919–1932*, p. 825)

It is on this basis that one of the resolutions of the Third Congress of Soviets of May 16, 1925, is to be explained:

"The Congress delegates to the Government the proper care of the Red Army and of the Red Fleet and Air Force, always keeping in mind that the fundamental guaranty against attack upon the State of the Workers lies in the actual strength of the armed forces of the Union." [46]

Akin to this in spirit are the Orders of the Day for the Red Forces of May 1, 1932:

"The policy of peace does not mean renunciation of defense. On the contrary, the Country of Soviets shall permit no one to invade its territory, to devastate socialistic undertakings and to tramp the fields of the collectivized farms The guaranty of this is the constantly growing strength of the Red Army. . . . Comrades, improve your military and political training, and solidify the revolutionary iron discipline of the Red Army. With still greater insistence try to master the actual technique of fighting! Let us adhere closer to the general policy of the [Communist] Party and to its Central Committee." [47]

Of like significance is a statement made by Litvinov at the IV Session of the Central Executive Committee of the U.S.S.R. on December 29, 1933, shortly after a series of non-aggression treaties had been signed by the Soviets:

"While agreeing to coöperate with other states . . . we cannot forget that we are dealing with capitalist states. . . . Being thus forced to maintain the defensive, we shall continue as of old—and ever more—to strengthen and improve the basis of our safety—our Red Army, Red Fleet, and Red Aviation." [48]

Non-Aggression Pacts

In view of all this, it can hardly be said that the Soviets advocate actual universal disarmament.

It would have been inconsistent with its openly avowed desire for world peace and disarmament, for the Soviet Union not to have entered into an extensive system of treaties of friendship and

[46] Art. 4 of the Resolutions (*Tretii S'ezd Sovetov. Stenograficheskii Otchet*, 1925.)

[47] *Izvestia*, May 1, 1932. *Cf. also* par. 10 of the "Slogans for the XV Anniversary of the October [Revolution of 1917]" "Long live the Red Army of the Soviet Union—the bulwark of the Soviet Peace Policy. . . ." (*Ibid.*, October 27, 1932.)

[48] *Ibid.*, December 30, 1933.

non-aggression. These constitute the fourth and last group of the official evidence of Soviet aspirations for peace.[49] The most detailed treaty of this nature is that with Persia of October 1, 1927, while the most comprehensive is the so-called "guaranty pact" entered into in December, 1925 by the U.S.S.R. and Turkey.[50] The most significant characteristic of this pact with Turkey is the lack of any military offensive or defensive clauses. The persistence shown by the Soviets in their aspirations for peace leaves little place for surprise that the Soviet Union was the first state where the Briand-Kellogg Pact of 1928 came into force: the Soviet Union

". . . could not fail to endeavor to take advantage of the American project for the purpose of proceeding further along the path of the struggle for the preservation of Peace." [51]

Despite their formal efforts to bring about peace on earth, and their advocation of complete disarmament, the very inscription on the emblem of the Soviet Union—"Proletarians of the World, Unite!"—reduces to a minimum the probability that the Soviets will never be engaged in another war. Indeed a successful socialistic revolution even in one country actually divides the world into two camps—the camp of socialism and that of capitalism. The immediate consequence of this division is the collision between the two sets of social ideals, which sooner or later leads to universal open class war. It was Marx who said that as long as there were class distinctions and class antagonisms "the last word of social science will be war or death, bloody struggle or annihilation." That this war is not to be understood as limited

[49] *Supra*, p. 302. Also Appendix XXIV.

[50] The text of the former is given in Appendix XIX *Cf* also Treaty with Poland of July 25, 1932, and with France of November 29, 1932 (*Sobr Zak. i Rasp S.S.S.R.*, 1933, II, pp. 41 and 63, respectively)

[51] The text is given in Appendix XVII. See also (1) Interview with Chicherin, People's Commissary for Foreign Affairs, Aug. 7, 1928 (2) Reply of Government of U.S.S.R. to Proposal to adhere to Kellogg Pact. (From People's Commissariat for Foreign Affairs.) (3) Note from Acting People's Commissary for Foreign Affairs, Litvinov, to Patek, Polish Minister to the U.S.S.R., Dec. 29, 1928 (4) Moscow Protocol of Feb. 9, 1929 (5) Reply of U.S.S.R. Government to Polish Note, Jan. 11, 1929. (Handed to Zelinski, Chargé d'Affaires of the Polish Government in the U.S.S.R., by Karski, on behalf of Litvinov) (6) Proposal by Soviet Government for Procedure for Signing Soviet-Polish Protocol, Jan. 21, 1929. (7) Speech by Litvinov at signing of Protocol on Feb. 9, 1929 (*Sovetskii Soiuz v Bor'be za Mir*, pp. 321ff.)

to a conflict between classes is evident in his expressed belief that

"A theory of a universal brotherhood of *nations*, which does not take into consideration either the lessons of history, or the degree of cultural development of separate peoples, is merely a Utopian dream." [52]

Summary

Without going into the issue of the sincerity of the communist authorities within the Soviet Union in resorting to means to prevent an inception of open armed conflict, there is little doubt that their specific efforts envisaging permanent peace via disarmament can be accepted only under reservation of their peculiar reaction towards pacifism, and the significance of imperialism as revealed at the Sixth World Congress of Comintern:

"The primary duty of communists in their struggle against an imperialistic war is to unveil the bourgeois preparations for war, and to show to the masses at large the actual state of affairs. This means first of all that an intensive political struggle and propaganda must be carried on *against pacifism*." [53]

"Imperialism, as the monopolistic stage of capitalism, foments the conflicts of capitalism to such a degree that 'peace' becomes merely a resting period for new wars." [54]

[52] Karl Marx, *Lit Nasl*, III, p. 250. (Italics by author.)
[53] *Kommunisticheskii Internatsional v Dokumentakh, 1919–1932*, p. 799.
[54] *Ibid.*, p. 797. For other provisions see Appendix XXIII.

Chapter XI

WAR

In comparing the apparently peaceful aims of the world, in which the Soviets join, with the Marxian prophesy of future wars, it appears that the aspirations of the U.S S R for universal peace must be viewed as concurrent with basic policies embodying both military and political preparation of the Soviet proletariat for new wars in the future. This leads to an analysis of the Soviet conception of war.

Soviet Conception of War

Wars may be classed as offensive or defensive, but, when regarded as instruments of national policy, usually only the former are of significance. They are considered "imperialistic," if waged by states pursuing imperialistic aims; and "nationalistic" or "revolutionary," when conducted by countries, or peoples, for national liberation. All aggressive wars are theoretically incompatible with efforts towards universal peace. That the Soviets condemn imperialistic wars waged by capitalistic countries is evidenced by their formal attitude towards disarmament, and by their accession to the Briand-Kellogg Pact of 1928. But their reaction to nationalistic and revolutionary wars is not the same. This is true not only of civil wars, but also of international wars, when waged by proletarian states for the purpose of overthrowing capitalistic régimes in other countries. As Lenin said:

Lenin's Theory

"War is a great disaster. But a social-democrat cannot analyze war apart from its historic [sic] importance. For him there can be no such thing as absolute disaster, or absolute welfare and absolute truth. He must analyze and evaluate the importance of war from the point of view of the interests of his class—the proletariat. . . He must evaluate war not by the number of its casualties, but by its political consequences. Above the interests of the individuals perishing and suffering from the war must stand the interests of the class. And if the war serves the interests of the proletariat, as a class and *in toto*, and secures for it liberation from the [capitalist] yoke, and

freedom for struggle and development,—such war is progress, irrespective of the victims and the suffering which it entails." [1]

Elsewhere he said:

"No revolutionary class can renounce revolutionary war, for it would mean self condemnation for a ridiculous pacifism. . . . To renounce this war . . . would mean to forget all the science of Marxism and the experience of all European revolutions." [2]

The lack of differentiation in these statements between "offensive" and "defensive" operations is not unintentional, for Lenin did not eliminate the possibility of either kind of international war for a communist state while in the transition period of a Dictatorship of the Proletariat.

Conditions in the world today, however, preclude the possibility of the Soviets either supporting one of the parties to a war already in progress, or launching an aggressive war on their own part. As to the first proposition: although theoretically it is the duty of the proletarian state to support every "revolutionary" war, the Soviets could ally themselves for military purposes only with a Power whose political convictions they shared. No such state exists today outside their own borders.

As to the second proposition: the declared object of the Communist Party, to quote Bukharin, is

". . . [establishment of] an International Soviet Republic. The overthrow of imperialistic governments by armed uprisings, and the organization of Soviet republics. . . . Therefore the program of our party is the program of international revolution and the liberation of the oppressed and weak." [3]

The effectiveness of international war for the fomentation of civil uprising is well illustrated in the Russian Revolution of 1917 and the German Revolution of 1918. They evidence quite convincingly that the privations which the masses suffer during war, and the fact that it is the proletariat which comprises the main body of the army, are a great stimulus to popular discontent. Lenin predicted that in a war between a proletarian and a

[1] Lenin, *Sobr Soch.*, VI, p 457.
[2] *Ibid.*, XIV, I, p 309
[3] *Cf.* the Theses of the Sixth World Congress of the Comintern.

capitalist state, the proletarians of the latter will take advantage of the difficulties occasioned the bourgeois elements of the nation to encompass the defeat of their own state.[4] At the same time he emphasized that the soundest strategy in war is to postpone operations until the moral disintegration of the enemy renders the delivery of the mortal blow not only possible, but easy. Hence an essential condition for the initiation of war by the Soviet Union is assurance that socialism has matured in another country to a degree sufficient to induce a class war in the country attacked. Since, however, there are no signs of such headway made by socialism in any country outside the Soviet Union, the conclusion appears inevitable that the Soviets will engage only in defensive wars for some time to come.[5]

War is defined in non-communist writings on international law in a great variety of ways. Technically war is a scientific contest of armed public forces, while in the legal sense it is a state of affairs during the continuance of which the parties to the war may legally exercise force against each other.[6] In *Bishop* v. *Jones*, war in its legal sense is defined as "the state of nations among whom there is an interruption of all pacific relations, and a general contestation of arms authorized by the sovereign."[7] A unique conception of war as nothing but a different phase of the current political relations between states is contained in the definition of Clausewitz:

"Everybody knows that wars are caused by political relations between governments and peoples; usually, however, they [wars] are regarded as connoting a situation under which—from the very outbreak of hostilities—these relations cease to exist, and where this new condition of affairs is subject only to its own specific laws. We say to the contrary: war is nothing but a continuation of the political relationship by the use of different means."[8]

It is not surprising that the flexibility of this definition of war was duly appreciated by the communists. It was admirably

[4] Lenin, *Sobr. Soch*, XIII, p. 82.

[5] It is on these grounds that the communists' assurance of non-aggression, so often voiced by the Soviets, may be taken as not unwarranted for the time being.

[6] Grotius, *De Jure Belli ac Pacis*, I, i, 2.

[7] 28 Texas, 294, 319

[8] von Clausewitz, *Vom Kriege*, p 28

adopted to their logical necessities. It permitted aggressive war to appear in the guise of an instigation to self-determination, or, at worst, as an armed class intervention—a mere extention of the class conflict beyond the confines of the U.S.S.R. The toiling masses, having gained a victory at home, are only assisting the proletariat of another country. War is thus an integral part of Marxian state politics, which *ex principio* are not interrupted thereby. Politics for a communist are focused upon class differentiation, which in its turn is the genesis of the struggle between the classes. And this struggle is the state itself. So war becomes nothing but an extension of the domestic policies of the dominant class.

The acceptance of the Clausewitz definition of war by the communists was sanctioned by Lenin when he said that "war is a continuation of the same policies by using other (namely, *forcible*) means . . . "[9] Such a definition implies that every war must be viewed and appraised individually, and that the ultimate decision as to its desirability will depend largely upon the concrete political *status quo* of the states involved in the conflict. The modification of the definition by the insertion of the expression "forcible" is very significant for communists. It suggests the conception of compulsion as opposed to freedom. Lenin expatiates upon this by saying that the victorious proletariat must help the oppressed classes even "by using armed force against the exploiting classes and their states, in case of necessity."[10]

Another importance of the definition of war given by Clausewitz is the explanation which it affords of Lenin's theory of the transformation of war in the classical sense, *i.e.*, imperialistic war waged by capitalists, into civil war between classes, and *vice versa*, the change of "nationalistic" or "revolutionary" wars into imperialistic wars. It is in accordance with this theory of Lenin that the civil war following the Brest-Litovsk Treaty of 1918 was viewed by the communists as a normal outgrowth of Russia's participation in the World War and that the revolutionary wars waged by the Baltic provinces of the former Russian

[9] *Lenin, Sobr Soch.*, XVIII, p. 97. (Italics by author.)
[10] *Ibid*, XVIII, pp. 232–233.

Empire were finally regarded by the Soviets as imperialistic struggles.

Soviet War Record

In reviewing the application by the Soviets of the laws of war, for the purpose of the present study it is fitting to eliminate all consideration of the warfare between the Soviet armies and the anti-Bolshevist armies under Admiral Kolchak, and Generals Miller, Yudenitch, Denikin, Wrangel, and Ditericks from 1918 to 1922.[11] These "wars" were nothing but a continuation of the open class-struggle which began in March, 1917, but with the rôles of the parties reversed: then it had been the proletariat which had begun hostilities, now the initiative was taken by the conservative elements of the Russian people, whose aim was to restore the order best fitted to their political philosophy. As this struggle terminated in complete victory for the Red forces, their antagonists—the "Whites"—being forced to migrate to foreign lands, no treaties of peace were necessary. In brief, these "counter-revolutionary" campaigns were plain insurrections, constituting war in a material sense, as distinguished from war in the legal sense.

There remains a series of other "wars," namely, those with Finland, Estonia, Latvia, Lithuania, and Poland. From a purely legal point of view, they cannot be considered as international in the classical sense of the term. Their genesis is to be sought in the urge to self-determination which culminated in the separation of these countries from their parent state, Russia, or, to be exact, from the R.S.F.S.R. As such, these "wars" at the beginning may also be viewed as political insurrections, though differing in their aims from those just described. The extent to which the laws of war apply in such instances depends upon political circumstances. Inasmuch as these republics (then still provinces of Russia) gradually succeeded in setting up their own authority, assumed responsibility for their own acts, and during the struggle were accorded recognition as sovereign political entities by certain foreign powers, the hostilities eventually acquired the status of an international war with all the consequences

[11] A comprehensive account of the three-year internal strife in Russia (1917–1920) is found in Stewart, *The White Armies of Russia: a chronicle of counter-revolution and allied intervention* (The Macmillan Company, New York, 1933)

resulting therefrom. The treaties of peace which terminated these wars are sufficient evidence of this change from insurrections, or civil war, to international war [12]

Lack of material evidence leaves much to hypothesis as regards the attitude of the Soviet State to the laws of war. Hence, only a brief analysis of certain of them will be attempted here. Prior to the Second Hague Peace Conference of 1907, war was considered as commencing with the opening of hostilities, a declaration of war not being essential. Article 1 of the Hague Convention of 1907, Relative to the Opening of Hostilities, changed this rule:

> "The Contracting Parties recognize that hostilities between themselves must not commence without previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war." [13]

Declaration

There has been no occasion for the Soviets to evidence their attitude toward the requirement of a declaration previous to the commencement of war. According to Soviet official records, the *raison d'être* of all the wars they have thus far carried on was the necessity of self-defense. Those engaged in the hostilities against the Soviets undoubtedly had their own explanations; but, be that as it may, the "wars" of the Soviets with Finland, Poland, and the Baltic Republics actually commenced as civil wars, as to the inception of which no declaration is essential It is probable, however, that the Soviet authorities would favor, at least in theory, the above-cited provisions of the Hague Convention. The political strength of the Soviet Union is still far from adequate to enable it to initiate an aggressive war such as that envisaged by Lenin. The only alternative for the Soviets is the adoption of a passive policy, with an eventual resort to "armed self-defense" in case of necessity. The blame for the initiation of war being thus thrown upon their foes, the likelihood is that the requirement of a declaration of war would not be overlooked by the Soviets.[14] Evidence of this is found in the

[12] *Cf* Lenin's theory on this, *Sobr. Soch*, XIII, *passim*
[13] *Brit & For. State Papers*, C, p 332
[14] *Cf* the texts of the telegrams exchanged between the People's Commissariat for Foreign Affairs of the RSFSR and the Foreign Minister of Poland in

very first words of the Soviet radio message sent to the Polish people on May 2, 1918, after Vilna had been taken by Polish troops under command of General Zhelihovski:

"Vilna, capital of the brotherly Republic of Lithuania and White-Russia, has been attacked by Polish troops without any justification and without any previous declaration of war. . . ."[15]

The effects of the outbreak of war are manifold: suspension of normal diplomatic intercourse between the belligerents, changes in treaty obligations, limitation or suspension of civil rights in a belligerent country, etc. Unfortunately, Soviet materials do not throw much light on the communist attitude towards these issues. In practice there can hardly have been any problems relative to diplomatic intercourse or change of treaty obligations, for most of the countries with which the Soviets have been at "war" had not long enjoyed the status of independent sovereign states with representations abroad, parties to international treaties. The Soviets do, however, recognize that the existence of war entails lack of diplomatic relations between the belligerent states. Evidence of this is found in the fact that although the independence of Finland, Estonia, Latvia, and Lithuania had been recognized by the Soviets as early as 1918, so that there would have been no reason for delay in establishing normal diplomatic relations had these states not been at war with the Soviets, it was not until peace had been concluded that diplomatic relations with the R.S.F.S.R. were in fact established.[16]

The next problem connected with war is the area or region within which the belligerents may prepare and execute hostilities

Area

April, 1920, and the Manifesto of the All-Russian Central Executive Committee of May 7, 1920, issued to the Polish people (*Krasnaia Kniga Sbornik diplomaticheskikh dokumentov v Russko-Pol'skikh otnosheniakh s 1918 po 1920 g.*, pp. 96ff. See also *Sovetskaia Rossia i Pol'sha*

[15] *Krasnaia Kniga*, p. 56.

[16] *Cf.* provisions of Art. 36 of the Treaty of Peace with Finland of Oct. 14, 1920 (*Sborn. Deistv Dogov.*, I, 1924, p. 183; III, 6, L.N.T.S.), Art. 15 of similar treaty with Estonia of Feb. 2, 1920 (*ibid.*, I, 1921, p. 100, XI, 30, L.N.T.S.), Art. 19 of similar treaty with Latvia of Aug. 11, 1920 (*ibid.*, I, 1924, p. 75; II, 196, L.N.T.S.), and Art. 14 of similar treaty with Lithuania of July 12, 1920 (*ibid.*, I, 1922, p. 50; III, 106, L.N.T.S.). The provision regarding establishment of diplomatic relations with Poland in the Peace Treaty of Mar. 18, 1921 (Art. 24) is not in point because the records of the R.S.F.S.R. do not show that Poland had previously been recognized as a sovereign state

against each other. In general, this embraces all land and water, and also the air space which constitute the domain of the belligerent states. Excluded from this, however, must be the land, water, or air space which may have been neutralized or demilitarized. In the area of war are included also the high seas. To quote Oppenheim:

"In this meaning, 'region of war' ought to be distinguished from 'theatre of war.' The latter is that part of territory, or the open sea, on which hostilities actually take place. Legally no part of the earth which is not region of war may be made the theatre of war; but not every section of the whole region of war is necessarily theatre of war" [17]

If the "war" is an armed intervention, launched by the dominating proletariat to assist the corresponding class in another country, the distinction between the "region" and the "theatre" of war loses its importance. For communists the class differentiation must dominate this distinction and automatically make the "theatre of war" coextensive with the "region of war." However, the difficult international position of the Soviets requires that the distinction be not yet abandoned by the Soviet leaders. Evidence of this is found in the wording of the Extraordinary Measures for the Protection of the Revolutionary *Status Quo*. Article 16 provides that martial law is to be declared in

"localities included *in the theatre of war hostilities, i.e.,* territory in which the armed forces of the Union of S S.R. prepare and execute hostilities, or where are situated auxiliary organizations of the armies in the field." [18]

The heading of Chapter III (Arts. 9–15) refers to: "*Martial Law not in the Theatre of War Hostilities.*" As neither the R.S.F.S.R. nor the countries with which it has been at war had any colonies, protectorates, or territories even temporarily occupied, over which they exercised jurisdiction, it is difficult to judge as to whether the Soviets would include them in the possible war area or not. It may be said, however, that they would recognize the fact

[17] Oppenheim, *International Law*, 3d ed., II, pp. 92–93.
[18] Joint Decree of the Central Executive Committee and Council of Peoples' Commissaries of the U.S.S R. of Apr. 3, 1925 (*Sobr. Zak. i Rasp. S S.S.R.*, 1925, I, pp. 304ff.). (Italics by author.)

that a state, or a portion thereof had been neutralized, or that a zone had been demilitarized. Evidence as to the former is found in the provision of Article 5 of the Treaty of Peace with Estonia:

"Should the perpetual neutrality of Estonia be internationally recognized, Russia undertakes to respect such neutrality and to join in guaranteeing it." [19]

The attitude of the Soviets in respect to demilitarized zones is best seen in the Treaty of Peace with Finland, by which Finland agreed to take measures for the demilitarization of several of its islands in the Gulf of Finland. This military neutralization was to include:

". . . the prohibition of constructing or establishing upon these islands any fortifications, batteries, military observation posts, wireless stations of a power exceeding a half-kilowatt, ports under military authorities and naval bases . . . and further, the prohibition of stationing upon these islands a greater number of troops than is necessary for the maintenance of order." [20]

Russia undertook to support measures taken with a view to obtaining the international guaranty of this neutralization, particularly in regard to the Island of Hogland.[21]

Article 16 provides furthermore that

"1. The Contracting Parties mutually undertake to maintain no military establishments or armaments designed for purpose of offense, upon Ladoga, its banks, the rivers and canals running into Ladoga, nor upon the Neva as far as the Ivanoffski Rapids (Ivanovskie Porogi) . . .

"2. Should the Gulf of Finland and the Baltic Sea be neutralized, the Contracting Powers mutually undertake to neutralize Ladoga also." [22]

Persons

The next group of problems concerns persons in war—the status of individuals, and the treatment accorded them by the

[19] *Sborn. Deistv. Dogov*, I, 1924, p. 197; XI, 30, L N T S. *Cf* also Art. 12 of the Treaty of Peace with Finland (*ibid*, I, 1924, p. 176; III, 6, L N T S.).

[20] Art. 13 (*ibid.*, I, 1924, p. 176; III, 6, L.N.T.S).

[21] Article 14 (*ibid*, I, 1924, p. 176; III, 6, L N T S)

[22] *Cf* Arts 15 and 17; also Art 6 of the Treaty with Estonia (*ibid*, I, 1924, p 196; XI, 30, L.N T S.).

enemy state. The communists agree with bourgeois statesmen that war is not to be considered as a relation between individuals. For the latter, war is a conflict of states, but for the communists it is ever in the class that the individuality of the person is merged. Hence war is a contest between classes. Yet whether the protagonists are states in the traditional sense, or "classes" in the communist, one of the main aims of war is the reduction or defeat of the enemy's armed forces, which are composed of individuals. This in its turn brings about the problem of the status of the individuals of the parties at war, irrespective of theories regarding the nature of war. The World War proved that in modern times in case of war the whole nation is engaged in some kind of allied activity, consequently the traditional distinction between combatants and non-combatants has become pointless. For a communist the differentiation is definitely undesirable, for war being a contest between two opposing classes, there should be only two categories of persons—the proletarians and their alleged "oppressors."

Combatants and Non-Combatants

Since, however, there remain activities which call for no immediate use of arms, not to mention the position of children and invalids, the division into combatants and non-combatants is still considered useful. The uneasy position of the Soviet Union, surrounded by states not sharing its political philosophy, forces the Soviet authorities to submit to a provisional recognition of this differentiation by the formal adoption of rules on the issue, in spite of their being contradictory to the principles of communist philosophy. Although the Soviet Union has not acceded to the Hague Convention of 1907 Respecting the Law and Customs of War on Land,[23] or to the Geneva Convention Relating to the Treatment of Prisoners of War of July 27, 1929,[24] the Soviet law of 1925 on compulsory military service is important as having a close bearing on the provisions regarding combatants and non-combatants contained in the said Convention of 1907:

[23] IV Convention (*Brit. & For. State Papers*, C., pp. 338ff). *Cf.* Soviet Communiqué of June 10, 1919, conveyed to the Polish Government, in which reference is made to Art. 56 of the IV Hague Convention (*Krasnaia Kniga*, p. 66).
[24] CXVIII, 345, L.N.T.S

"The protection of the Union of S S.R. is the duty of all citizens of the Union.

"The defense of the Union of S S R. with arms in hand is effected only by the working masses.

"All non-toiling elements are charged with the performance of other military [war] duties." [25]

While there is here no explicit reference to a division between combatants and non-combatants, the text leaves no room for doubt that at least formally the distinction is recognized by the Soviets.

Prisoners of War

According to the provisions of Article 3 of the Annex to the Convention of 1907 Respecting the Laws and Customs of War on Land, in case of capture by the enemy, both combatants and non-combatants have the right to claim treatment as prisoners of war.[26] From the emphasis upon class solidarity in the communist conception of war, it would logically follow that the problem of prisoners of war would be quite different for a Marxist than for a non-communist. Irrespective of the offensive or defensive nature of the war, a communist state, engaged in war for the purpose of destroying the capitalist class, might well adopt an uncompromising principle of *animus furandi*, manifested in destruction of life and property. Whether, in the case of an external war in the near future, this attitude would prevail to the extent that it did in the Bolshevist Revolution of 1917 and the earlier years of the Soviet Régime, or whether during the period of the Dictatorship of the Proletariat the Soviets would follow their policy of temporary compromise with the practice of capitalist states, remains a matter for conjecture.

Suppose, however, a hypothetical war between the Soviet Union and a capitalist state. The chief aim which the Soviet State would pursue in this conflict would be a socialist revolution in that state. It is indisputable, furthermore, that the main body of the troops of the enemy state would be composed of proletarians. Hence, according to the principle of proletarian solidar-

[25] Article 1 of the Decree of Sept. 18, 1925 (*Sobr Zak i Rasp. S S.S.R*, 1925, I, p. 850) *Cf.* provision of Art. 11 of the same Decree by which, "Working women may enter military service in time of peace only as volunteers," while in time of war "they may be mobilized for special services"

[26] IV Convention (*Brit & For. State Papers*, C, p. 351).

ity, the enemy enlisted men, when taken into capitivity by the Soviets, might well expect a "brotherly" welcome. Irrespective of the form which their treatment might assume, whether political "reëducation" along the lines of communist philosophy, or an invitation to join the proletarian ranks immediately, it would differ from the practice of non-communist states The situation would not be at all the same were officers taken prisoners, however. Obviously, it could not be expected that officers, who in the majority of cases do not belong to the proletariat, would be converted to communism by mere theoretical instruction. Hence the officers would always be considered by the Soviet authorities as class enemies.[27] As captives within a state under the Régime of the Dictatorship of the Proletariat, their fate would obviously depend upon the outcome of the war. In case the proletariat of the enemy state succeeded in transforming the "imperialist" war into a civil war and established a communist form of government, the fate of the officers taken as war prisoners by the Soviets might become dependent on special considerations, the results of which are by no means easy to predict. In case the proletariat failed to establish its rule, the Soviet Union would more than likely resort to its habit of provisional adjustment to the practices of non-communist states. This would mean that the enemy officers taken prisoners by Soviet troops would be accorded treatment in conformity with the accepted rules of international law. It is no doubt on such grounds that the Soviet counter-project for a code of rules on prisoners of war, submitted to the International Red Cross Conference in 1923, was made comparatively conservative.[28] Striking in this counter-project

[27] Interesting is the Joint Decree of the Revolutionary Military Council of the Soviet Republic and of the People's Commissariat for the Interior of May 7, 1920, on prisoners taken during the Civil War. While the enlisted men taken into captivity could be recommended for immediate enlistment in the Red Army by *Revolutionary Military Councils, the fate of the officers was left to the discretion* of the Special Section of the All-Russian Extraordinary Commission, the "Cheka." (*Sobr. Uzak i Rasp., R.S.F.S.R.*, 1920, p. 210.)

[28] For the text of this counter-project see Appendix XVIII. *The X International* Conference of the Red Cross at Geneva in 1921 made a draft for a new code on war prisoners to replace Ch. II of the IV Hague Convention of 1907, and forwarded copies of it to all states parties to the Red Cross Conventions. The Central Committee of the Russian Red Cross established a special drafting committee under *the chairmanship of Professor* Korovin, which made the draft of this counter-project

is the lack of any distinction between officers and soldiers, the term "war prisoners" being used to cover both [29]

The same lack of distinction between officers and soldiers is the rule in international treaties entered into by the Soviets. Paragraph 3 of the Appendix to Article 9 of the Treaty of Peace with Estonia may be quoted as a typical example of the provisions found in most Soviet treaties and agreements referring to the issue:

"Prisoners of war, shall, at the time of their release, have restored to them everything of which they were deprived by acts of the authorities of the government which captured them, and shall also receive the full amount of the pay due to them, or any part of such pay withheld from them." [30]

The only exception is found in the Agreement with Hungary on Repatriation of War Prisoners of July 28, 1921, Articles 6 and 7 of which read respectively:

"6 In principle, the exchange of war prisoners mentioned in Arts. 1–4 shall be effected as follows:

"(1) The enlisted men (proletarians) are to be exchanged for Russian enlisted men and bourgeois war-prisoners in Hungary.

"(2) The [Hungarian] officers and bourgeois elements (bourgeoisie), as well as Captain Marshall, are to be exchanged for the persons enumerated in the annex hereto.

"7. The exchange of persons of the first category . . . shall be effected without delay in conformity with the Copenhagen Agreement [of May 21, 1920].

"The exchange of persons of the second category, *i.e.*, of Hungarian bourgeois elements and officers in Russia, for the persons enumerated

[29] *Cf* the provision of Art 17, IV Hague Convention, by which "officers taken prisoners shall receive their pay as officers of corresponding rank in the country where they are detained," and the provision of the Soviet counter-project by which . "The cost of the maintenance of the war prisoners shall be repaid mutually, account being taken of the equivalent of the labor performed by the prisoner in state and private enterprises, in so far as this equivalent was not covered by the pay, etc."

[30] *Sborn. Deistv Dogov*, I, 1924, p 200; XI, 30, L N T S *Cf* Treaties of Peace with Latvia, Lithuania, Finland, and Poland; also special conventions on repatriation concluded with Austria on July 5, 1920 (*Sborn. Deistv Dogov*, I, 1924, pp. 213ff) and Supplementary Agreement of Dec 7, 1921 (*ibid*, pp 214ff.); with Germany on Apr 19, 1920, on Apr 23, 1920, on July 7, 1920, on Jan 22, 1921, and Supplementary Agreement of May 6, 1921 (*ibid*, pp. 225ff ; II, 64, L N T S., II, 86, L N T S., and VI, 268, L N T S, for Agreements of April 19, 1920, July 7, 1920, and May 6, 1921, respectively).

in the annex shall be effected through an intermediary of a third state that shall be invited [to act] as umpire after the ratification of the present treaty. . . ." [31]

In addition to being the only document where the distinction between officers and enlisted men as prisoners of war is on record, this agreement bears testimony to the attitude of class antagonism which a communist state may be expected to assume to the officers of a non-communist state, if the Soviets should be at war with it.

Civil Prisoners

A closely connected problem is that of civilian prisoners, hostages, and spies. Although, again, theoretically the test of class affiliation must be applied, the fundamental distinction between war and civilian prisoners is at least technically admitted by the Soviet authorities. Thus, Article 2 of the Convention with Poland of February 24, 1921, says in regard to the repatriation of war prisoners:

"Prisoners of war shall be understood to include combatants of the Contracting Party who have been made prisoners by the army of the other Contracting Party on the Polish-Russian-Ukrainian front; [and] non-combatants formerly belonging to the active armed forces and taken prisoners by the other Party. . . ." [32]

Civilian prisoners, on the other hand, are defined as follows:

"Civilian prisoners and interned persons shall be understood to include:

"(1) All nationals of a Contracting Party who are in the territory of the other Party and are, or have been, detained, arrested, or subjected to police supervision, and likewise nationals against whom judicial or administrative proceedings have been or are being instituted for political offenses, or offenses against the State, or offenses committed in the interest of the other Party. . . .

"(2) Hostages." [33]

[31] *Sborn Deistv. Dogov.*, I, 1924, pp. 221–222. *Cf.* also Agreements with Hungary of May 21, 1920, and of Oct. 3, 1921 (*ibid*, I, 1924, pp. 219–220, and 222–224, respectively).

[32] *Ibid.*, I, 1924, p. 266

[33] *Ibid.*, I, 1924, pp 265–266 *Cf* the provisions of note to Arts. 3 and 4 of the Treaty with Germany of April 19, 1920 "Hostages of both parties are considered according to this agreement as war prisoners and are subject to repatriation." (*Ibid*, I, 1924, p 225, II, 64, L.N.T.S)

The necessity for a separate definition of civil prisoners is explained by the nature of the wars in which the Soviets had been engaged. They were not only political struggles, but class conflicts as well; the proletariat of the Soviet State being aggressive in its "class-imperialism," each party took the necessary measures to render harmless those who belonged to the opposing class: in Soviet Russia it was the conservative elements that were made civil prisoners, while in the Baltic Republics and Poland it was the leaders of the socialistic groups that were considered the most dangerous, and consequently restrained. It was for this reason that the civil prisoners had to be distinguished not only from prisoners of war, but from hostages as well.[31]

Hostages

Hostages in a public war are persons who are kept by the enemy, their freedom (or life) to stand as a pledge to secure legitimate warfare on the part of the state to which they belong. The difference between civil prisoners and hostages is that while for the former the security of their persons is unconditionally assured, the safety of the latters' persons is dependent upon the good behavior of their states. Irrespective of the fact that international law regards the taking of hostages as illegal, the records of the Soviet-Polish war of 1919–1920 show that this old practice is not wholly obsolete.

On May 6, 1919, the Soviet Government sent a radio message to the press in Warsaw in which it was said that

> "as a protest against betrayal by Polish landlords and the bourgeoisie in Vilna, and in response to the arrest of peaceful civil inhabitants in the territories of Lithuania and White-Russia occupied by Polish legionaires, and also in protest against the mass-executions which have taken place,—250 Polish nationals representing the bourgeoisie, and among them Archbishop Baron Ropp and Baron Dengel, are arrested and detained as hostages." [33]

The communiqué of the People's Commissariat for Foreign Affairs to the Polish Minister for Foreign Affairs of August 12, 1919, refers to the settlement of problems relative to "*hostages*,

[34] *Cf* Art. 9 of the Agreement between the Delegates of the Polish Red Cross and of the Russian Red Cross, signed at Mikashevichi on November 9, 1919 (*Krasnaia Kniga*, p. 79).

[33] *Krasnaia Kniga*, p. 57

war prisoners, etc." [86] Significant is the Soviet Declaration of October 23, 1919, signed by the Representative of the Russian Red Cross, Markhlevsky:

"Taking into consideration the fact that Soviet Russia only resorted to the system of hostages compelled thereto by the violation of [the rules of] international law in respect to Soviet citizens, and was making use of it only for the purpose of stopping such violation [by the Poles], the Representative of the Russian Red Cross . . . declares . . . that the Soviet authorities are ready to discontinue the system of hostages in respect to Polish nationals under condition that the principle of reciprocity be observed by the Polish Government. . . ." [87]

In spite of the fact that this declaration, as well as the provision of Art. 9 of the Agreement of November 9, 1919, suggests the abolition of the institution of hostages, Article 1 of the Convention with Poland of February 24, 1921, in regard to the repatriation of war prisoners enumerates "*hostages*, civil prisoners, interned persons, war prisoners, refugees and emigrés." [88] Thus the whole problem of hostages still remains uncertain.

Spies

There is another group of persons that may be taken into captivity, who do not fall within any of these categories—spies; individuals, who, for the purpose of obtaining information in a belligerent state, with the intention of communicating it to the hostile party, are acting under false pretenses. "To establish the quality of a spy in the case of a soldier there must be disguise; in the case of a civilian spy, disguise is not essential—the clandestine nature of the act is sufficient condemnation." [89] The treatment of spies outlined in Article 193[16] of the Criminal Code of the R.S.F.S.R. of 1926 is suggestive of the general attitude of the Soviets toward the issue.

"Military espionage, *i.e.*, collecting and transmitting to foreign governments, counter-revolutionary organizations and enemy armies

[86] *Cf.* the Soviet Memorandum of Aug. 12, 1919, to the Polish Minister for Foreign Affairs (*Krasnaia Kniga*, p. 70).

[87] *Krasnaia Kniga*, p. 72.

[88] *Sborn. Deistv. Dogov.*, I, 1924, p. 265; IV, 142, L.N.T.S (Italics by author) Art. 9 of the Agreement of Nov 9, 1919, reads in part:
"Both parties declare that *in view of the lapse of the practice of taking hostages* . . . under the term 'civil prisoners' are understood . ." etc. (Italics by author.) (*Krasnaia Kniga*, p. 57)

[89] Spaight, *War Rights on Land*, p 203.

information about the armed forces and the potential military strength of the Union of S S.R. is punished by the highest degree of social protection," [40]

which means capital punishment While not differing essentially from the rules found in non-communist states, the Soviet law here, too, emphasizes the importance of the class conception of human society. By inserting "counter-revolutionary organizations" among the hostile entities, the Soviet law-makers give to the term "spy" a much wider interpretation than is customary with other states.

Thus, the problem of prisoners, in all its aspects, has been given extensive consideration by the Soviets. The necessity of altering the Hague Convention of 1907 to conform with the developments of the last quarter of a century is fully appreciated by them. The counter-project submitted by the Soviet Union to the XI International Conference of the Red Cross in 1923 shows that a uniform international code on war prisoners is considered by the Soviets as the only proper way to solve the problem.

Sick and Wounded

The treatment of the sick and wounded of the enemy is another aspect of the problem relative to individuals in war. Rules on the subject were drawn up in the Geneva Conventions of 1864 [41] and 1906.[42] On July 27, 1929, there was signed at Geneva a new Convention for the Amelioration of the Condition of the Wounded and the Sick of Armies in the Field, which revises the provisions of the former conventions, and constitutes the present law on the subject.[43] The fact that the Soviet Union acceded to the Conventions of 1906 [44] and of 1929 [45] without reservations is convincing proof that at least formally the Soviets wish to be considered as sharing the views of other states in this matter. Class chauvinism, which is germane to Soviet dealings with non-communist states, however, warrants the assumption that political necessity is an important, if not decisive, factor in Soviet adherence to these conventions.

[40] *Sobr. Kodeksov R.S.F.S.R.*, 4-e izd., p. 704
[41] *Brit. & For. State Papers*, LV, pp. 43ff.
[42] *Ibid.*, XCIX, pp. 968ff
[43] CXVIII, 305, L.N.T.S.
[44] Sobr. *Zak. i Rasp. S.S.S.R.*, 1926, II, p. 228
[45] Decree of Oct. 25, 1931 (*ibid.*, 1932, II, p. 33)

Besides acceding to the Geneva Conventions on the treatment of the sick and wounded in war, the Soviet State passed a Decree on June 4, 1918, by which it acceded to all the international Red Cross conventions.[46] Another important legislative act was the Decree of August 7, 1918, by which the former private Russian Society of the Red Cross was taken over by the Soviets, and became the Red Cross of the R.S.F.S.R. Article 1 of this Decree reads:

"The Russian Society of the Red Cross is acting on the basis of the Geneva Convention of 1864 and conventions subsequent thereto. It is a member of the International Red Cross Union and communicates *with similar organizations in other countries.*" [47]

Among diplomatic documents bearing testimony to the attitude of the Soviet Union towards the Red Cross, besides the conventions to which it is a party,[48] mention is proper of the communiqué sent by Chicherin to the Polish Minister of Foreign Affairs on January 8, 1919, charging the Polish Government with the murder of the members of the Russian Red Cross Delegation. This communiqué said, among other things:

". . . Forced by the revolutionary sentiment of the Polish masses to remove the Delegation of the Russian Red Cross from the Fortress of Warsaw, you detained it, in contradiction to your statements and in violation of the *most elementary rules of international custom*, and sent it to the frontier of the District of Grodno where this delegation was murdered by your agents. . . . This crime was committed against the representatives of the Red Cross, who in all countries enjoy special guaranties during the performance of their humanitarian duties. . . ." [49]

In a communiqué conveyed to the Polish Government on June 10, 1919, the Chairman of the Russian Red Cross referred to the fact that the Soviet State had become a party to all Red Cross Conventions, and that therefore the confiscation of the Red Cross property by Polish authorities was "an unheard of violation of the

[46] *Sborn Deistv Dogov.*, I–II, 1928, p. 359.

[47] *Sborn Dekretov 1917–1918 gg*, p. 101. Similar Red Cross Societies are formed in every separate Soviet Union Republic *Cf* also Decree of May 3, 1918 (*ibid.*, 1917–1918, p. 29). In 1925 was established the Union of the Red Cross and Red Serpent Societies of the Socialist Soviet Republics (Decree of Sept. 1, 1925 (*Sobr. Zak i Rasp. S.S.S.R.*, 1925, I, p. 1065).

[48] *Cf* the Reports of the XI (1923), XII (1925), and XIII (1928) International Red Cross Conferences

[49] *Krasnaia Kniga*, p. 36. (Italics by author.)

rules of international law as well as the customs of the Red Cross. . . ." [50]

The importance of the Red Cross and of the medical personnel in general in the eyes of the Soviets is thus explained by Korovin:

"Inasmuch as for the U.S.S.R. the most valuable human material is found not only among its own soldiers (the real 'masters' and builders of the socialistic fatherland), but also among the soldiers of the enemy, in great majority representing peasants, proletarian and semi-proletarian masses of the population, who are eventual allies of the Workers' and Peasants' Republic—the conditions of preserving their lives and health are of prime importance for the U.S.S.R." [51]

The Dead

To conclude the problems relative to persons, brief mention must be made of the treatment of the dead. According to Article 20 of the Supplement to the Brest-Litovsk Treaty of March 3, 1918:

"Each Contracting Party obligates itself to respect and to care for the graves, within its territory, of those belonging to the army, as well as of other nationals of the other Party who died during their internment or deportation; persons authorized by this Party may also, in agreement with the national authorities, tend to [the] care and proper adornment of the graves." [52]

Article 3 of the Geneva Convention of 1929 in part provides:

"After every engagement, the belligerent who remains in possession of the field of battle shall take measures to search for the wounded and dead and to protect them from robbery and ill treatment."

Article 4 in part reads:

"They shall collect and likewise forward to each other all objects of personal use found on the field of battle or on the dead, especially one half of their identity plaque, the other half remaining attached to the body. . . .

[50] *Krasnaia Kniga*, p 59

[51] Korovin, *Mezhdunarodnoe Pravo Perekhodnogo Vremeni*, p 127 So keenly did the Soviets feel the necessity of using all means at their command to preserve the lives of the proletariat during war that for some time they even maintained a higher medical personnel in the army drawn from non-proletarian strata of society Despite the impossibility of assigning to such persons political duties in furtherance of the communist cause (which duties were ordinarily required of everyone in the service) their technical ability was relied upon until proletarians could be trained to take their place.

[52] *Text of the Russian "Peace,"* p 127

"They shall see that a careful examination, if possible, medical, is made of the bodies of the dead prior to their internment or cremation, with a view of verifying their death, establishing their identity, and in order to be able to furnish a report thereon.

"They shall further see that they are honorably buried and that the graves are treated with respect and may always be found again." [53]

The fact that the Soviet Union acceded to this Convention in 1931 leaves nothing more to be said on the subject.

Methods of Warfare

Concurrently with the efforts to prevent wars and to protect the general community so far as possible from their evil effects, attempts have been made to prescribe rules to govern the actual conduct of hostilities. Under the Hague Convention of 1907 with Respect to the Laws and Customs of War on Land, the right of belligerents to adopt means of injuring the enemy is not unlimited.[54] Although the Soviet Union has not acceded to this Convention, it is probable that in case of an open conflict, it would formally abide by the rules prescribed therein. It is true that the uncompromising nature of the class struggle, which is the essential of war for a communist state, suggests that the principle of *animus furandi* might predominate, at the expense of the Hague rules. On the other hand, the accession of the Soviet Union to the Red Cross Conventions, the importance of preserving the proletarian masses,[55] and, finally, political caution dictated by uncertainty as to which party would be ultimately victorious favors the assumption that, at least until a favorable outcome of the war was certain, these rules would not be disregarded by the Soviets.

A few illustrations taken from the diplomatic records of the Soviet Union are suggestive. On June 3, 1919, Chicherin sent a communiqué to the Polish Ministry for Foreign Affairs in which he protested against violations of the rules of war by Polish troops. Particular objections were made: (1) to compelling officers of the Red Army to choose between being executed and joining the anti-Bolshevist forces, (2) the giving over to pillage of towns and cities, and, (3) the treacherous killing of

[53] CXVIII, 345, L.N.T.S.
[54] Art XXII of the Annex to the Convention (*Brit. & For. State Papers*, C, p. 354).
[55] *Supra*, p. 329.

Red soldiers and those sympathizing with the communists. The communiqué concluded with the statement that

"If the Polish Government has *decided . . to continue the war* against the Soviet Republics, the Government of the latter, in protesting against the non-application in this war of the most elementary guaranties which are generally admitted in the practice of the capitalist countries, at least demands that the Polish authorities should stop the disgraceful practice of systematic *pogroms* of innocent people and of mass execution of socialist workers. The Government of the R.S.F.S.R. demands that to the soldiers and commanders of the Soviet Armies taken prisoners should be guaranteed all rights generally accorded to war prisoners, and treatment in accordance therewith" [56]

On June 6, 1919, another protest was sent by the Soviet Red Cross to the International Red Cross at Geneva, demanding that measures be taken to put an end to the illegal methods of warfare used by Polish troops, as well as "to stop criminal pogroms, the horror and the disgrace of the XX century." [57] Finally, a reaction to the importance of the issue is found in the provision of Article 193[18] of the Criminal Code of the R.S.F.S.R. of 1926:

"Unlawful violence committed upon the civil population by the soldiery during the war or in the region of hostilities is punished by imprisonment with solitary confinement for not less than three years. . . ." [58]

The importance of the above illustrations lies in the fact that the Soviets never fail to base their charges on the rules of international law, be they in respect to the injury of the enemy, or to the methods or tactics applied in the conduct of hostilities.

Perhaps the most important specific attempts to make the conduct of hostilities more humane are connected with chemical, bacteriological, and aërial warfare. The first refers mainly to the use of asphyxiating or poisonous gases, and the second to deliberate resort to bacteriological preparations for spreading such epidemics as typhus and tuberculosis. The Hague Convention of July 29, 1899, with Respect to the Laws and Customs of

[56] *Krasnaia Kniga*, p. 63. *Cf.* also the Radio Communiqué of May 6, 1919 (*ibid*, p. 57).
[57] *Ibid*, p. 66.
[58] *Sobr. Kodeksov R.S.F.S.R.*, 4-e izd., p. 705.

War on Land contained a provision according to which the Contracting Powers agreed to abstain from the use of poison or poisoned arms.[59] In a separate Declaration of the same day the Contracting Powers agreed to "abstain from the use of projectiles, the object of which is the diffusion of asphyxiating or deleterious gases."[60] This proved too great a restriction upon the technical development of modern means of warfare. The Regulations Respecting the Laws and Customs of War on Land, attached to the Fourth Hague Convention of 1907, prohibited the use of "poison or poisoned weapons" and the employment of "arms, projectiles, or material calculated to cause unnecessary suffering," but omitted all mention of the use of poison gas.[61] This Convention was never acceded to by the Soviets, with the result not only that they were not bound by the provisions, but that the Convention itself was inoperative during the World War, its applicability having been made conditional upon all the belligerents being parties thereto.[62] While no effective steps were taken during the World War to put an end to the use of gases, the Treaties of Peace with the Central Powers contained provisions by which the employment of gases during the war was made the basis for prohibiting the Central Powers from manufacturing or importing in the future any gases or liquids of a poisonous nature.[63] The inadequacy of these provisions to effect restrictions in the use of poisonous gases lay in the fact that these limitations were made applicable only to the defeated countries. Moreover, they contained no mention of the use of bacteriological methods of warfare which had become prevalent subsequent to the Hague Convention, and which were extensively used for the first time during the World War. On June 17, 1925, there was signed at

Poison gas and Bacteriological Warfare

[59] Article XXIII, Clause "a," of the Annex to the Convention (*Brit. & For State Papers*, XCI, p 997).

[60] *Brit. & For State Papers*, XCI, p 1014.

[61] *Ibid*, C, p. 354.

[62] Art. 2 reads, "The provisions contained in the Regulations referred to in Article 1, as well as in the present Convention, do not apply except between Contracting Powers, and then only *if all belligerents* are parties to the Convention." (*Brit & For State Papers*, C, p 345.) This Convention was never ratified by Turkey, Italy, or Serbia, and the Soviets have never acceded to it. (Italics by author.)

[63] Art 171 of the Treaty of Versailles. *Cf.* also Art. 135 of the Treaty of St. Germain, Art. 82 of the Treaty of Neuilly, and Art. 119 of the Treaty of Trianon.

Geneva the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous, or Other Gases, and of Bacteriological Methods of Warfare This was the culmination of a gradual development of international legislation on the issue since the formation of the League of Nations, as well as of efforts made by the International Red Cross. It is the attitude of the Soviets toward this international agreement which best illustrates the communist outlook on the issue. As early as April 10, 1922, Chicherin, in delivering his address at the International Economic Conference at Genoa, had said that the Soviet Delegation

"would support all tendencies to lighten the burden of militarism, on the condition that the limitation should be applicable to armies of all countries, and that the rules of war should absolutely forbid barbarous methods like *poisonous gases, aerial warfare, and, especially, offenses against the civil population.* . . ." [64]

On November 30, 1927, at the Fourth Session of the Preparatory Commission for the International Disarmament Conference at Geneva, Litvinov submitted the Soviet Declaration, Article 5 of which in part stated that

"The Government of the U S.S R. wholly adheres to the convention relative to the prohibition of chemical and bacteriological methods resorted to for war purposes; it expresses its readiness to sign it immediately, and insists simultaneously that the time for ratification thereof by all states be made most short; and it maintains that to make certain materialization [of this project] it is essential to consider the necessity of establishing the control of the Workers over production in chemical industries, which, in states where they are highly developed, can in a very short time be put into service for war purposes." [65]

On December 2, 1927, the Protocol of 1925, prohibiting the use of asphyxiating or poisonous gases and the employment of bacteriological methods of warfare was signed by Litvinov, and on March 7, 1928, was ratified by the Central Executive Committee of the U.S.S.R.[66] Thus the attitude of the Soviets towards chemical and bacteriological warfare is clear.

[64] *Materialy Genuezkoi Konferentzii*, p 80 (Italics by author)
[65] *Sovetskii Soiuz v Bor'be za Mir*, p. 192.
[66] *Sborn. Deistv Dogov.*, V, 1930, p 18.

Aircraft

Unfortunately, the same cannot be said about the problems concerning the aircraft as a weapon of war, in general, or the laws regulating aërial warfare, in particular. Even after the commencement of the World War, jurists did not succeed in making governments adopt any clear rules restricting the use of aircraft in war. The provisions of the Hague Conventions of 1899 and 1907 referred to the air only incidentally,[67] and the importance of the Paris Convention of October 13, 1919, relating to the regulation of aërial navigation, is nil as regards a time of war, for, according to Article 38:

"In case of war, the provisions of the present convention shall not affect the freedom of action of the Contracting States either as belligerents or as neutrals." [68]

Neither have the rules for the regulation of aërial warfare proposed by the Commission of Jurists in 1923 been embodied in conventions, or otherwise become international law in the technical sense of the term; [69] the Pan-American Convention on Commercial Aviation signed at Havana, February 15, 1928, and the International Convention signed at Warsaw on October 12, 1929, relate to commercial aviation only.[70] All this shows how pitifully inadequate are the rules on aerial warfare in general. In their present form, these rules are largely inferential and speculative in character, and must be considered as based upon principles analogous to those of land or naval warfare. There being no clear-cut rules on the issue suggested or adopted by the Soviets themselves, the conclusion is not unwarranted that the Soviets would feel justified in resorting to aërial warfare if occasion demanded. As usual, their use of this arm will depend not only upon the physical but upon the social aspect of the

[67] The Hague Conventions of 1899 and 1907 prohibited discharge of projectiles and explosives from balloons (Declarations Prohibiting the Discharge of Projectiles and Explosives from Balloons, *Brit. & For State Papers*, XCI, p 1011, and C, p. 455, respectively). Regulations on bombardment and wireless telegraphy were other instances relative to the issue, but like the first one did not develop into a permanent principle.

[68] *International Commission for Air Navigation, Convention Relating to the Regulation of Aërial Navigation, dated October 13, 1919* (Paris, May, 1929), pp. 1–10.

[69] John Bassett Moore, *International Law and Some Current Illusions*, pp. 210ff.

[70] A J I L., XXII, Supplement, p 124, and *Bulletin of Treaty Information* (U.S Dept of State), No. 7, Sept 1929, Supplement

enemy. To preserve the lives of the proletarian masses, the Soviets may be most ready to conduct their hostilities in the air so as to minimize suffering by applying to air warfare a definite system of rules. If, on the other hand, the element of necessity prevails and class-consciousness does not contradict, there is nothing to prevent unrestricted aerial warfare, since, to paraphrase the rather sarcastic remark of Egor'ev, contemporary international law on air warfare is nothing but a legalized sanction to complete freedom in action and horrifying brutality in the guise of philanthropic intentions.[71]

Propaganda

The Soviets are responsible for the introduction of a new method of warfare, which, according to the point of view, may be considered as a humanitarian measure to shorten the duration of war, or a new means of injuring the enemy—socialist propaganda. In any war between the Soviets and a capitalist state, the goal of the former will be to incite civil war in the enemy state in order to bring about the overthrow of the capitalist régime and the establishment of the proletarian authority. Furthermore, the main body of the army always consists of the proletariat, and it is only logical for the Soviets to be least of all desirous of the destruction of that element, even if it be in the enemy ranks. Hence an unusual problem for the Communist State: while engaged in subjecting the enemy state, to spare the lives of the enemy soldiers. The only really effective way to achieve this objective is to bring the war to a victorious end as quickly as possible.

For the solution of this problem the Soviet authorities resort to their new method of warfare, political disruption of the enemy army by socialist propaganda, of which the "fraternization" on the front is a concrete manifestation. This is nothing but a practical application of Lenin's teaching that success is possible only after the moral disintegration of the enemy.[72] The first lessons in this method of saving the lives of proletarian masses were learned by the communist authorities shortly after the abdication of Tzar Nicholas II in 1917. The mass propaganda

[71] Egor'ev, "Pravo Vozdushnoi Voiny," *Voprosy Vozdushnogo Prava*, I, p. 126.
[72] *Supra*, p. 313

carried on by both Soviet and anti-Soviet (White) armies during the civil war that followed the downfall of Kerensky's Government proved the effectiveness of these means.[73] New in principle, these methods cannot be considered as violations of international law, for there are no rules of war known in relation to this issue. Furthermore, the Hague Regulations prohibiting the compulsion of "the nationals of the hostile party to take part in the operations of war directed against their own country. . . ."[74] is not applicable here. For it is compulsion which is proscribed, whereas the effect of propaganda manifests itself in a free decision of those who voluntarily accept the ideas sponsored by such propaganda.

Military Necessity

The doctrine of military necessity—known technically as *Kriegsraison*—forms the obverse to the humanitarian efforts to minimize the destructive effects of war. It is commonly recognized that there may be situations in which the military necessity of the moment outweighs the force of the so-called "laws of war." Under such circumstances, actions ordinarily proscribed become admissible, though not legal. Certain restrictions surround even such non-legal activities, however. It is generally admitted that reprisals or retaliatory acts of warfare should be resorted to not as mere revenge, but only as a means of protection, and that only in the gravest cases of imperative necessity. They should only be ordered with the authorization of the commander in chief. Finally, they must be consistent with the precepts of humanity and morality.

The general terms in which the limitations on the use of reprisals are formulated, as in the Oxford Code of 1880, and in the Rules on Land Warfare of 1917 published by the United States War Department, offer great freedom for loose interpretation. Thus, the conceptions of revenge and of imperative necessity are very vague, and are still more so when analyzed in the light of communist conceptions. For it must be clearly understood that it is part of the political credo of the Communist

[73] As illustration of such propaganda see the Manifesto of the Central Executive Committee of the R S F S.R to Polish workers, peasants and soldiers of May 7, 1920, issued in an attempt to disorganize the Polish army and bring to an end the war with Poland. (*Krasnaia Kniga*, pp. 105ff.)

[74] Art. 23, IV Hague Convention, 1907 (*Brit & For. State Papers*, C, p. 354).

Party that all means are justifiable, provided they serve its ends.[75] Hence, for it, "necessity" will be a resultant of the following factors: (1) the general principle of class solidarity of the proletarian masses, (2) the Dictatorship of the Proletariat, and (3) fear that any show of mercy will result in stimulation of counter-revolutionary movements. These elements, added to the common hatred for the bourgeoisie, claimed by communists to flourish universally among the proletariat, suffice to justify the argument that all limitations upon the use of reprisals must give way to the principle of *animus furandi*.[76] Under such conditions the idea that approval of the use of reprisals must be vested with the commander in chief, and that they must conform to the dictates of humanity and morality lose their significance. The source of the authority sanctioning these acts becomes secondary in importance. The precepts of humanity are easily colored by peculiar class policies, while those of morality achieve a new, purely Marxian interpretation. Hence the somewhat incongruous conclusion is reached that in order to reduce the evils of war to a minimum and to preserve the international proletariat to the utmost, the Soviets—while incidentally subscribing to certain restrictive rules for the conduct of hostilities—rely chiefly upon a complete disregard of all limitations, arguing that war *à l'outrance* terminates the conflict more quickly and with fewer ultimate losses.

Military Occupation

The problem of the Soviet attitude towards the law of military occupation, offers but little for discussion. While there is enough factual material found in the experiences of the greater part of Estonian, Latvian, Lithuanian, and Polish territories under the occupation of Soviet troops in 1918–1919, the official documentation is almost nil. The provision of the Fourth Hague Convention to the effect that the occupant shall take "all steps in his power to reëstablish and insure, as far as possible, public order and safety *while respecting, unless absolutely prevented, the laws*

[75] It should be realized that the ultimate aim of the Bolshevists—World Revolution—is to be attained at *any cost*

[76] Consistency, of course, does not require that the Soviets should hesitate to point out to an enemy state—especially a non-communist state engaged in an aggressive war against them—limitations upon which they consider the use of reprisals to be contingent. *Cf.* the instance of the hostages taken during the war with Poland, referred to *supra*, pp 325–326

in force in the country[77] is obviously in conflict with fundamental Soviet principles. The laws in the territory occupied by the Soviet army would be the laws of a capitalist régime, which fact alone would necessitate their immediate repeal. Similarly incompatible with Soviet theories is the provision of Article 46 of the Fourth Hague Convention of 1907, according to which private property cannot be confiscated.[78] Obviously its application by a communist state must depend on the class allegiance of the owner of the property in question, the assumption being not unreasonable that members of the proletarian class will be given special consideration in the matter.

The practice of the Soviets regarding territories under military ocupation, proves also that the rules of the Hague Regulations of 1907, relative to taxes, contributions and requisitions, appropriation of movable state property, etc., must all be considered as hardly consistent with communist philosophy. Indeed, anxious to establish a system of government patterned after that existing under the Soviet Régime, and to assist the local proletariat in reorganizing the social order in the occupied territory to conform to their communistic ideas, the Soviets naturally could not consider themselves bound by the traditions of the capitalist order.

val
arfare

The Soviet legal material on naval warfare is extremely limited. Acceptance of the Hague regulations concerning hospital ships found in the Hague Convention of 1907 for the Adaptation to Maritime War of the Principles of the Geneva Convention of 1906 suggests the conclusion that in general the Soviets would follow the principles adopted by other states, due allowance being made for the effect of the class complex, as in case of land warfare.[79]

[77] Article 43, IV Hague Convention, 1907 (*Brit & For. State Papers*, C, p 359).

[78] The outstanding document is the Decree of Jan. 3, 1931, and Instructions thereto, on requisitions and confiscations (*Sobr Zak i Rasp S.S.S.R.*, 1921, pp 41ff.). In Arts 31–45 provisions of this Decree relate to requisitions by military and naval authorities, which during the war were allowed "in the territory of the R.S.F.S.R., under jurisdiction of the Revolutionary Military Council of the Fronts or of the separate armies, and in enemy territories occupied by the laws of war, as well as in the territories of neutral states, if the latter are occupied by the enemy forces" (Art 2) Art 40, furthermore, provides that the permit for requisition must be issued by the commanding officer of a unit not below a division, while Art 41 refers to exceptions to this

[79] *Sborn. Deistv Dogov*, I–II, 1928, p 360.

Neutrality

Still less can be said about the attitude of the Soviets towards the so-called laws of neutrality. It is true that the Soviet Union has entered into several treaties of neutrality and non-aggression with other states.[80] As they have already been analyzed, it need only be remarked here that their terms are very general, containing no detailed rules such as are found in the Hague Convention of 1907 Respecting the Rights and Duties of Neutral Powers and Persons in War on Land.[81] Yet, in spite of the fact that there are no other documentary data on the issue, the assumption is justified that the Soviets, by entering into these agreements, reserve for themselves the formal possibility of referring to the traditional laws of neutrality in case of necessity. Concretely, this might happen if the Soviet Union were one of the belligerent parties. Were the Soviet Union neutral, on the other hand, the fact that it had not subscribed to any definite rules on neutrality might prove convenient in permitting it to appeal to the communist conception of war, the duty of proletarian coöperation, and the general social and political situation as the decisive factors in shaping its attitude.

Non-Hostile Relations Between Belligerents

That the principle of non-hostile relations between belligerents is recognized by the Soviets, is seen from the use of passports and safe-conducts, the suspension of hostilities, and the proposals of truce and armistice which have taken place during the wars waged by the Soviets. Without going into the too well-known preliminaries to the Brest-Litovsk Treaty, a brief reference may be made to the communiqué sent by the Soviet Government on August 8, 1919, while hostilities were still in progress, to the Polish Ministry for Foreign Affairs, expressing readiness to send a Delegation of the Soviet Red Cross to Poland for discussion of such problems as hostages, war prisoners, the customs of war, etc., but under condition that safe conduct be absolutely guaranteed.[82] On July 15, 1920, an agreement was reached between the Government of the Far-Eastern Republic (D.V.R.) and the Japanese General Commando in Siberia, by which an armistice was declared involving "cessation of hostilities on the

[80] *Supra*, pp. 265–266 and 308. *Cf.* Appendices XIX and XXIV.
[81] *Brit. & For. State Papers*, C, pp. 359ff.
[82] *Krasnaia Kniga*, p. 70. For a documentary history of the peace negotiations at Brest-Litovsk, see Magnes, *Russia and Germany at Brest-Litovsk*, 1919.

Transbikal front and in the region of the Yablonov Range." [83] This armistice was to remain in force until the diplomatic representatives should decide on the final solution of the conflict.

ermination
War

War may be terminated by conquest, by the cessation of hostilities, either alone or in conjunction with a unilateral legislative enactment to that effect, or by treaty. Implying a submission of one of the belligerents to the other without condition, conquest is no longer common, and as such offers no interest for this study.

Cessation of hostilities terminates war *de facto* (although this does not necessarily mean a *de jure* termination) The Russo-Persian War of 1801, and the Franco-Mexican War of 1862–1867 illustrate such a termination as this in the past. More recently China, which did not sign the Treaty of Versailles, considered the war with Germany at an end only upon the passage of a law on August 3, 1919, and the United States was still formally at war with Germany until the passage of a retroactive law by Congress on August 10, 1922. The most outstanding instance in Soviet practice of terminating war without the benefit of treaty is the statement made on January 28 (February 10), 1918, at the first Peace Conference at Brest-Litovsk:

"We cannot sanction violence. We are stopping hostilities, but we are forced to desist from signing a [formal] Peace Treaty." [84]

In conformity with this profession, on the same day a signed Declaration was transmitted by the Soviet Government to the combined allied delegations:

"In the name of the Council of People's Commissaries, the Government of the Russian Federated Republic informs the governments and peoples at war with us, as well as allied and neutral nations, that while refusing to sign a rapacious treaty, Russia, for her part, declares the present war with Germany, Austria-Hungary, Turkey and Bulgaria at an end. Simultaneously orders are being issued for demobilization of the Russian armies." [85]

The most common way of terminating war is, however, by a treaty of peace, which now is usually preceded by a preliminary

[83] Kliuchnikov i Sabanin, *as cited*, pp. 38ff.
[84] *Sovetskii Soiuz v Bor'be za Mir*, p. 41.
[85] *Ibid*, p. 41.

agreement or protocol. The Soviets ordinarily follow this custom. They employ preliminary agreements, and the contents of the treaties of peace are similar to those of non-communist states. The treaties usually cover matters of a general, and of a specific nature. To the former belong such matters as the cessation of hostilities, provision for immunity for acts done without authority during the war, the treatment of prisoners, and the resumption of diplomatic relations. It suffices to say here that the provisions of the Soviet treaties of peace prove the recognition by the Soviets of the general international practice. Among the special matters usually covered in treaties of peace belong: (1) cession of territory, (2) reparations, (3) option, and (4) financial and economic readjustments. These matters are likewise covered by the Soviet treaties of peace, thus proving that the Soviets recognize that the general effect of a treaty of peace is to replace the belligerent countries in their normal relation to each other.[86]

Summary

To conclude this study of the Soviet attitude toward war, it is only necessary to remark three things. Bolshevism, politically materialized in the Soviet Union, having accepted the Marxian theory of the state as class-war, and being moved by a profound faith in the unquestionable righteousness of its cause—world revolution—is consistent in regarding war as a continuation of current policies by new, forcible means.[87] Indeed, for the Soviets, wars in the future will be at bottom nothing but open collisions between the economic factors of production and the political aspirations of states. This means that the real objective of war for the Soviets is the destruction of the other protagonist class, brought about either by the breakdown of the capitalist economic centers and the substitution of a universal world economy in its stead, or by the forcible submission of non-proletarian elements to the will of the proletariat. Attributing *ex principio* no special worth to human individuals as such, the Soviets conceive of violence as sanctified by the use to which it is put. Hence, despite a formal adherence to humanitarian principles, evidenced by accession to certain International Conventions, the Soviets appraise the value of rules regulating the conduct of warfare in the light

[86] Hall, *International Law*, 7th ed., 1917, p. 598.
[87] *Supra*, pp 311ff

of entirely new motives. At the same time, they never lose sight of the political necessity of temporary adjustment to the views of foreign states dictated by the broader interests of the proletariat.

CHAPTER XII

CONCLUSION

THE present study has attempted to analyze the Soviet experiment of applying the communistic theories of Karl Marx in the field of international law. In seeking to discover the practical value of this experiment with international law, one must bear in mind that inasmuch as the communists' conception of state is that of a struggle of classes, whose ultimate aim is world revolution, involving the abolition of all states, the Soviets might well be shut out from any international relations with other members of the family of nations. Since, however, the latter, although making no concessions to communist political theories, have nevertheless not excluded the Soviets from international intercourse, it is evident that the Soviet Government has found some method of compromise between the abstract revolutionary theories of the communists and the concrete political necessities with which it is confronted. This compromise is effected by transfusing the fundamental principles of international law with a communistic interpretation, while leaving their practical application to the dictates of political opportunism. This results in an inconsistent dualism.

Thus the state—for communists a struggle of classes—is acknowledged by Soviet diplomacy to possess most of the characteristics of the non-communist state. Sovereignty—for communists a phenomenon quite distinct from that of the non-communists—in Soviet practice carries with it all the rights inherent in the conservative conception. Persons—for communists theoretically disindividualized units of a class, ultimately to have no political nationality—in Soviet practice are definitely individual bearers of political allegiance and of all the rights and duties resulting therefrom. Diplomatic agents—theoretically

equal—in practice are accorded the rights and courtesies of the most conservative states. Treaties—theoretically instruments implying the equality of the Contracting Parties—in Soviet practice (as in that of other countries) are submissive when concluded with a stronger nation, dominating when the other state is weaker, equal only where the equilibrium of strength necessitates it. The resort to amicable means for the settlement of international disputes—adapted, according to communist theory, for controversies among capitalist states, but impossible for the Soviets because of the prejudice against them—in Soviet practice is actually provided for in the texts of treaties and diplomatic notes. War—an object of persistent condemnation by the communists, formally pacifists *par excellence*—appears in the practice of the Soviets as another means to the same ends sought by peaceful diplomacy.

This inconsistency between communist theories and Soviet practice is, however, not a just ground for condemnation of the Soviet Régime. Indeed, it is only a reflection of the contradictions inherent in Marxian legal philosophy. This is apparent upon an analysis of three factors of his legal system: personal rights, the nature of the law, and the development of law, in correlation with the Soviet conception of state sovereignty, the genesis of international law, and the functioning of the "International Law of the Transition Period."

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The most outstanding inconsistency found in Marxism is the concurrence of such contradictory phenomena as individualism and collectivism. On the one hand, Marxism teaches that every individual, by the mere fact of being nothing more than a component of a class, loses his individuality in the legal sense of the term. Thus, having surrendered his personal rights to the class as a whole, he retains only a provisional lease of certain privileges granted by the class, which may be used only for the ultimate benefit of the grantor. On the other hand, the value of the individual is not lost to view. Marxism assumes that law must be based on society, not society on law, and inasmuch as society, or the class, is composed of individuals, it follows that the law expresses not only the general will but that of the individual as well. In other words, it is essentially the individual

that is the moving factor in shaping the law, the latter being nothing but an expression of his will manifested through the agency representing him, the class.

State Sovereignty

When applied to international law, the conceptions analogous to the individual and the class are, respectively, those of separate states and the international community. Technically speaking, the conflict between Marxian individualism and collectivism is reflected in the antithesis between the sovereign rights of independent states and the imperative force of the rules of international law sanctioned by the family of nations The Soviet solution of the intricate problems arising from this relation is nothing but an attempt safely to pilot the communist state between the doctrine of theoretical sovereignty, which brooks no restraint, on the one side, and the political necessity of concurring in the will of the majority, on the other. Although subjection of "state individualism" to the "collectivism" of the majority is peculiarly difficult for the Soviets, because they consider non-communist international law as nothing but a code of rules initiated and enforced by the more powerful states for the sole purpose of suppressing minor political entities, they do at times find it proper to acknowledge doctrines which are conservative not only in principle, but from the fact that their validity rests upon "collective" approval by the majority of states. So far as possible, however, they prefer to protect the sovereign individualism of the state by resorting to bi-partite agreements, rather than to multi-partite conventions. Thus, these concessions to non-communist doctrines, dictated by Soviet political opportunism, reflect the Marxian theoretical inconsistency between individualism and collectivism.

Marxian Conception of Law

A reflection of the Marxian conception of law is seen in the Soviet theory of the generics of international law. The basis for the Marxian theory of law is found in the reaction against the political philosophy of the eighteenth century, in general, and the idealistic optimism which followed the French Revolution, in particular. Marxism thus involves opposition to many of the contributions to political thought made during the nineteenth century. For the present purpose, however, its reaction to only three elements of this political philosophy—rationalism, individ-

ualism, and legal idealism—is of interest. It is in these three, respectively, that the main issues of Marxian legal philosophy—labor, class, and revolutionary justice—have their origin.

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Marx discarded the credo of rationalism: that the social order depended upon the intellect of man, and that man could invent an ideal social order and then materialize it by the mere application of laws conceived *ad hoc*. He advanced a new contrary doctrine in its stead: that history is regulated not by abstract calculations of the human mind, but by organic forces in man, and that the social order is shaped not by abstract inventions of the human intellect, but is the result of an elementary process reflecting the creative forces inherent in man. For Marx these creative forces were the labor of toiling man, *i.e.*, an organic phenomenon.

ividualism

Together with rationalism, the principle of individualism was also rejected. According to the new philosophy, the community is not an agglomeration of individuals, who by covenants can bring about a better social order. It is an organism *per se*, a complex entity of collected organic forces which develops according to its own internal rules For Marx these forces were founded not upon the optimistic belief that man is naturally good and that all his difficulties are accidental and can be easily avoided by human reason and will. For him they were based upon the one pessimistic assumption that man is essentially egotistic. Historically a slave to his own needs, man is destined to remain a perpetual toiler. Protection of the compensation he receives for his labors is essential, and the grouping of men with common interests is a natural outgrowth of the desire to make individual effort easier. Thus the subjection of the individual to the class is for Marx a natural phenomenon reflective of the predominance of collectivism over individualism. But consolidation into classes does not do away with the necessity of defending interests; antagonism between the classes is added to the conflicts of egotistic individuals. Conflicts between man and class must be settled by the organic development of the community, manifested in the conversion of individuals to the political philosophy of the class.

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Reaction against legal idealism was a characteristic of the nine-

teenth century. Having discarded the juridical illusion that abstract principles and concepts of human duties must be taken as an *a priori* indisputable basis of all social phenomena, it advanced the historical school of jurisprudence. For Karl Marx this meant historical materialism, with which he transfused the field of law, for him an integral part of political economy. He advanced the theory that economic factors form the sole basis for all social phenomena, and that the spirit and the forms of law are determined not by abstract idealism, but by the economic factors underlying any given social order. In other words, the basis for the development of law for him is the organic process reflecting the interrelation of labor, the will of the class, and a just distribution of economic returns.

All these three being organic, as shown, the conclusion should follow that for a Marxist the law itself is an organic phenomenon, which develops *ex interio*, reflecting thus the potential forces inherent in man. In refutation of this, however, is the idea found in Marxism that the contemporary state, both in its form and authority, while theoretically an organic struggle of classes—actually is nothing but an artificial superstructure imposed upon the community by forces which, though generated in the masses, gradually acquire an imperative character of their own, and tend to separate from the rest of the community which becomes submissive thereto. In other words, communal life is merely a mechanism operating according to definite plans imposed upon man by this political superstructure. According to this conception, the law is not an organic phenomenon, but an inorganic creation of man. Thus, not only is there an inconsistency in Marxism between individualism and collectivism, but in respect to the organic or inorganic nature of law as well. Is this not just the antithesis observed in the Soviet attitude towards law?

Soviet Conception of Law

As to the Soviet domestic legal system, such a conflict is evident. Theoretically, the Soviet law is a proletarian class law generated in the toiling masses for the protection of their labor, shaped by the organic needs and will of the class, and manifested in a just distribution of economic returns. In this aspect, the Soviet law is an organic phenomenon. On the other hand, however, the Régime of the Dictatorship which governs

the communal life under the Soviets is in itself a proof that actually the activities of the masses are regulated by an artificial, superimposed, political machinery, which is the Soviet State. The very conception of the Dictatorship in Moscow is evidence that the Soviet law is not a natural development, but an inorganic phenomenon imposed upon the proletariat by the communist party. It is the same dualism which is found in the "International Law of the Transition Period." Theoretically, it is organic, *for it is a reflection of the spontaneous aspirations of the* proletarian class; it is applied by the proletarian class to further its own development without regard to the political boundaries of nations; it is necessarily tolerated by the proletarian class because of the inevitability of the organic conflict between the proletarian and capitalist classes. In practice, however, it is inorganic. The Soviets came into being at a time when the states of the world were intent upon putting a stop to the spread of the international disorganization due primarily to the World War. It was deemed more necessary than ever before for states to submit themselves of their own accord to legal discipline, and to agree that though no one of them could impose its own laws upon the others, yet there were common principles of law to which they were equally subject. In spite of the fact that international disorganization might not be unwelcome to the Soviets, in view of their ultimate aims, in practice they find it advisable to disregard their theories and to admit the force of international rules established independently of communist ideals. The fact that the Soviets apply these rules in their international intercourse, in spite of their voice not being heard in the establishment of them, prompts the conclusion that while theoretically international law for the Soviets is an organic phenomenon, in practice, at least during the Dictatorship of the Proletariat, it is inorganic. This indicates a parallelism between the Soviet outlook on international law and the Marxian paradox between the organic and inorganic characteristics of the law.

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It is submitted, also, that it is the Marxian characteristics of the "dynamics" of the law that are reflected in the application of international law by the Soviets. Under "dynamics" are to be understood, firstly, the process of unfolding of the law, and,

secondly, its ultimate form. The growth of the law may be due to either of two processes: evolution or revolution. In Marxism both are conceived as concurrent possibilities Marxism advances the idea that all changes in law depend on a very slow, automatic process reflecting the evolution of communal life At the same time, it sanctions the method of forcible destruction of old forms of communal life, and maintains that a short, violent struggle is necessary to enable the establishment of a class-less commonwealth by victorious communism Is it not this dualism that is reflected in the Soviet "International Law of the Transition Period"?

In their domestic affairs, the Soviets were at first consistent in applying only revolutionary methods of social reconstruction After the civil war was over, however, they combined the evolutionary with the revolutionary process in the establishment of a new state. The development of their national laws was correspondingly dualistic. In the field of international law and relations the combination of both of these processes is evident from the very beginning of the Soviet Régime. The repudiation of Tsarist treaties, the abolition of diplomatic ranks, the assertion of the theory of terrestrial gravitation, and the use of propaganda during war are illustrations of revolutionary innovations in the field of international law. At the same time, the technique of their international relations, from the constant references to the principles of international law to the maintenance of the office of the *Chef de Protocol* in the Kremlin, shows that the Soviets content themselves also with slow evolutionary process of development of international law.

The other aspect of the dynamics of the law is its ultimate form. According to Marx the state is a struggle of classes, *i.e.*, a system of social relations, and the law is a phenomenon germane thereto. Furthermore, the state is bound to disappear upon the establishment of the class-less commonwealth. Hence the law itself, as an integral part of the state, is bound to be overtaken by a similar fate. However, will social relations among men also disappear? If not, the state and consequently the law is bound to persist, contrary to the Marxian postulate. This anomaly is not adequately explained in communist literature, but it definitely pres-

ages the difficulty which the Soviets encounter in disposing logically with international law. International law for them is nothing but a measure for extending communist social reconstruction beyond the political boundaries of the Soviet Union. It is a new interclass law, for determining and regulating the rights and duties of the internationally organized laboring classes in their common struggle for universal proletarian supremacy The very name applied by the Régime of the Dictatorship of the Proletariat, "International Law of the Transition Period," postulates its disappearance when the equalization of class differentiations shall have been accomplished on a world-wide scale. But international law cannot be dissociated from the social phenomena by which it is actuated. Even after the abolition of states and classes the law will persist, perhaps reverting to a true *jus gentium*.

Thus the anomalies in Soviet theories and practice manifest a parallelism to those of Marxian dogma. This is evident in the Soviet reaction to the problem of separate sovereign states and the will of the majority, in the concurrence of organic and inorganic characteristics in the "International Law of the Transition Period," in the coexistent conceptions of evolutionary and revolutionary processes in the development of international law, and, finally, in the logical embarrassment as to the ultimate fate of the law. The inconsistencies of the Soviets are the more excusable because of problems of a practical nature. Their régime is still frankly in the experimental stage, and they are surrounded by non-communists. Hence, the Soviet State must take care for the preservation of its political existence, to which end resort to opportunism and compromise is well-nigh unavoidable. Furthermore, the existence of such discrepancies between theory and practice serves as a gauge by which to measure the applicability of the communist principles of international law to the actual intercourse of nations. Whereas the difficulties of Marx were of a purely dialectic nature, those of the Soviets are chiefly pragmatic. They throw into relief the different relation between legal theory and practice in national and international fields. For, whereas in the national life of states theories may at any moment be translated into rules of conduct, in international

life novel legal theories must reckon with established principles. Here, a new theory can become law only after the sanction of the majority of states to the change has been secured. It is in the demonstration of this difference that one value of the Soviet experiment with international law lies. More concrete values are as yet hard to find, for the ideal class-less commonwealth is far from materialization, and communist international law has had an opportunity to develop only under the Régime of the Dictatorship of the Proletariat, a revolutionary authority resting directly on violence and absolutely unlimited by laws or rules. Hence it cannot be determined whether the communist interpretation of international law, if universally adopted and applied, would present improvements over the present system. However, the transfusion of the field of international law with Marxian theories is an unprecedented attempt, credit for which must go to the Soviets.

Whatever the practical or theoretic value of this study, it serves to emphasize the fundamentally different conceptions of international law held by non-communists and communists. While for non-communists the importance of international law lies not only in its external and technical forms, but in its spirit and in the purpose for which it exists, for communists, significant in international law is its essential theoretical superfluousness. Their practical application of its tenets is nothing but a diplomatic way of attempting gradually to remove this outstanding obstacle from the path of their revolutionary advance towards the stateless commonwealth, purposing to place it ultimately "along with the spinning wheel and bronze axe, in the museum of antiquities."

APPENDICES

LIST OF APPENDICES

. *Constitution of the Union of Socialist Soviet Republics.*
. Article 6 of the Treaty of Peace between Poland, Russia and the Ukraine, Signed at Riga, March 18, 1921.
. Decree of the All-Russian Central Executive Committee of December 15, 1921, on Forfeiture of Soviet Citizenship by Certain Categories of Persons.
. Circular of the People's Commissary for Foreign Affairs of December 8, 1921, No 26, concerning the Admission of Foreigners to Russian [Soviet] Citizenship.
. Statute on Citizenship of the Union of the S.S.R. of April 22, 1931.
. Decree of the Council of Peoples' Commissaries of May 22/June 4, 1918, concerning the Abolition of the Ranks of Diplomatic Representatives and the Denomination of these as Representatives Plenipotentiary of the Russian Socialist Federated Soviet Republic.
. Decree of the Council of Peoples' Commissaries of the R.S.F.S.R., November 4, 1921. Regulations Relating to Transit in the Territory of the Russian Socialist Federated Soviet Republic of Foreign Diplomatic Couriers and the Transportation of Diplomatic Mail.
. Guiding Instructions of the Central Executive Committee of the U.S.S.R. for the Representatives Plenipotentiary of the U S.S.R. Abroad, November 21, 1924.
. Ordinance of the Presidium of the Central Executive Committee of the U.S.S.R. of May 22, 1925, Amending the Statute on the People's Commissariat for Foreign Affairs.
. Decree of the Central Executive Committee and the Council of Peoples' Commissaries of the U.S.S.R. of August 27, 1926, on the Method of Communication of the Government Organs and Officials of the U.S.S.R. and Union Republics with the Government Organs and Officials of Foreign States.
. *Regulations Concerning Diplomatic Missions and Consular Institutions of Foreign States in the Territory of the Union of Socialist Soviet Republics Approved by the Central Executive*

Committee and the Council of the Peoples' Commissaries of the U.S.S R., January 14, 1927.

12. *Air Code of 1932 of the Union of Socialist Soviet Republics.*
13. Decree of Peace, Unanimously Adopted at a Meeting of the All-Russian Convention of Soviets of Workers', Soldiers', and Peasants' Deputies on November 8th, 1917.
14. Agreement between the R S F.S R. and Roumania, signed at Yassy, March 5, 1918, and at Odessa, March 9, 1918.
15. *Protest of R.S.F.S.R. Government against its Exclusion from Participation in the Washington Conference.* Telegram from Chicherin, People's Commissary for Foreign Affairs, to the *Governments of Great Britain, France, the United States of America,* China and Japan, on July 19, 1921.
16. [Extract] From Memorandum of Russian Delegation to Genoa *Conference, April 20, 1922.*
17. Reply of the Government of the U.S.S.R. to Proposal to Adhere to the Kellogg Pact.
18. *Fundamental Principles of the Soviet Project of a Code of Rules* on War Prisoners.
19. Treaty of Guaranty and Neutrality between the U.S.S.R. and *Persia, concluded at Moscow, on October 1, 1927.*
20. [Extract] From Declaration by the U.S.S.R. Delegation at the Meeting of Preparatory Disarmament Commission of November 30, 1927.
21. Decree of the Council of Peoples' Commissaries of October 20, 1930, regarding Economic Relations with Countries Applying *a Special Régime of Restrictions for Trade with the U.S.S.R.*
22. Protocol on the Legal Status of the Trade Representation of the Union of S S.R. in Lithuania, signed at Kaunas on August 29, 1931.
23. [Extract] From Resolutions of the Sixth World Congress of the Comintern, held at Moscow, August 17—September 1, 1928.
24. *List of Treaties entered into by the Soviets.*

APPENDIX I

CONSTITUTION OF THE UNION OF SOVIET SOCIALIST REPUBLICS

THE Central Executive Committee of the Union of Soviet Socialist Republics, solemnly proclaiming the permanency of the foundations of the Soviet Power, in execution of the resolution of the First Congress of Soviets of the U S.S.R., and likewise, on the basis of the agreement for the formation of the U.S.S.R., adopted at the First Congress of Soviets of the U.S.S R., in Moscow on December 30, 1922, and taking into consideration the corrections and amendments proposed by the Central Executive Committees of the Constituent Republics, resolves:

The declaration of the formation of the U.S.S R. and the treaty concerning the formation of the U.S S.R., shall form the fundamental law (Constitution) of the U.S.S.R.

SECTION I

DECLARATION REGARDING THE FORMATION OF THE U.S.S.R.

Since the formation of the Soviet Republics, the states of the world have divided into two camps—that of Capitalism and that of Socialism.

There—in the camp of Capitalism—are national enmity and inequality, colonial slavery and chauvinism, national oppression and massacres, imperialist brutalities and wars.

Here—in the camp of Socialism—are mutual confidence and peace, national freedom and equality, a dwelling together in peace and the brotherly collaboration of peoples.

The efforts of the capitalist world, in the course of the decades, to solve the question of nationalities by the joint method of the free development of peoples and the exploitation of man by man have proven vain. On the contrary, the web of national antagonism is becoming even more entangled threatening the very existence of capitalism. The bourgeoisie has proven incapable of bringing about coöperation among peoples.

Only in the camp of the Soviets, only under the prevalence of the proletarian dictatorship around which the majority of the population has rallied, has it become possible to destroy national oppression root and branch, to create an atmosphere of mutual trust and to lay the foundations for the brotherly coöperation of peoples.

Only thanks to these circumstances have the Soviet Republics been able to repel the external as well as the internal attacks of world imperialism. Solely because of these circumstances were they able successfully to end the Civil War, to secure their existence and to pass to the tasks of peaceful economic reconstruction.

But the years of war have not passed without leaving traces. The devastated fields and idle factories, the destruction of productive forces and the depletion of economic resources, this legacy of the war, make the isolated efforts of individual republics toward economic reconstruction inadequate. The restoration of national economy was found impossible as long as the separate republics maintained a divided existence.

On the other hand the instability of the international situation and the danger of new attacks point to the necessity of creating a common front of the Soviet Republics in the face of the surrounding capitalist world.

Finally, the very structure of the Soviet Power, which is international in its class character, calls the working masses of the Soviet Republics toward a unity of one socialist family.

All these circumstances imperatively demand the unification of the Soviet Republics into one Federal State, able to assure both its external security and internal economic prosperity, as well as the unhampered development of the various nations.

The will of the peoples of the Soviet Republics recently assembled at the Congresses of their Soviets and there unanimously accepting the decision for the formation of the "Union of Soviet Socialist Republics," serves as a reliable guarantee that this Union shall be the voluntary association of equal nations, that each republic is secured the right of free withdrawal from the Union, that admission to this Union shall be open to all Socialist Soviet Republics, such as are now existing and such as shall arise in the future, that the new united State is a fitting consummation of the beginnings which had their inception in November, 1917, toward the peaceful and brotherly collaboration of the peoples, that it shall stand as the firm bulwark against world capitalism, and form a decisive step towards the Union of the workers of all countries into one World Socialist Soviet Republic.

SECTION II

COVENANT

The Russian Socialist Federated Soviet Republic, the Ukrainian Socialist Soviet Republic, the White Russian Socialist Soviet Republic, the Transcaucasian Socialist Federated Soviet Republic (consisting of the Soviet Socialist Republic of Azerbaijan, the Soviet Socialist Republic of Georgia and the Soviet Socialist Republic of Armenia), the Turkoman Socialist Soviet Republic and the Uzbek Socialist Soviet Republic, by this covenant enter into a single Federal State to be known as "Union of Soviet Socialist Republics."

CHAPTER I

COMPETENCE OF THE SUPREME ORGANS OF AUTHORITY OF THE U S.S.R.

1. The sovereignty of the Union of Soviet Socialist Republics, as exercised through the supreme governing departments, shall include:

(*a*) The representation of the Union in international relations, the conduct of all diplomatic intercourse and the conclusion of political and other treaties with other foreign states;

(*b*) The modification of the external frontiers of the Union and the regulation of questions dealing with the alterations of boundaries between the Constituent Republics;

(*c*) The conclusion of treaties for the admission of new Republics into the Union;

(*d*) The declaration of war and the conclusion of peace;

(*e*) The contracting of foreign and domestic loans by the U.S.S.R., and the sanctioning of foreign and domestic loans of the Constituent Republics;

(*f*) The ratification of international treaties;

(*g*) Control of foreign trade, and establishment of a system of internal trade;

(*h*) Establishment of the basic principles and of a general plan for the whole national economic system of the Union; determination of the branches of industry and of separate industrial undertakings which are of federal scope; and the conclusion of concession agreements, both of federal scope and in behalf of the various Constituent Republics;

(*i*) The control of transport, posts and telegraphs;

(*j*) The organization and control of the armed forces of the U.S.S.R.;

(*k*) The approval of a single State budget for the U.S.S.R. comprising the budgets of the Constituent Republics; determination of the taxes and revenues applying to the whole U.S.S.R., as also of deductions therefrom and additions thereto for the budgets of the Constituent Republics; authorization of additional taxes and dues for the budgets of the Constituent Republics;

(*l*) Establishment of a single currency and credit system;

(*m*) Establishment of general principles governing the distribution and use of land, and the exploitation of mineral wealth, forests and waterways throughout the whole territory of the U.S.S.R.;

(*n*) Federal legislation on migration from one Republic to another, and establishment of a colonization fund;

(*o*) Establishment of basic principles for the composition and procedure of the courts and the civil and criminal legislation of the Union;

(*p*) The establishment of fundamental labor laws;

(*q*) Establishment of the general principles of public education;

(*r*) Adoption of general measures for the protection of public health;

(*s*) Establishment of a system of weights and measures;

(*t*) The organization of federal statistics;

(*u*) Fundamental legislation in the matter of citizenship of the U.S.S.R. in relation to the rights of foreigners;

(*v*) The right of amnesty extending over the whole territory of the Union;

(*w*) The repeal of decisions adopted by the different Soviet Congresses and Central Executive Committees of the several Constituent Republics infringing upon the present Constitution;

(*x*) Settlement of controversies arising between the Constituent Republics;

2. The ratification and amendment of the fundamental principles of the present Constitution shall be exclusively delegated to the Congress of Soviets of the U.S.S.R.

CHAPTER II

THE SOVEREIGNTY OF THE SEVERAL CONSTITUENT REPUBLICS AND FEDERAL CITIZENSHIP

3. The sovereignty of the Constituent Republics is restricted only within the limits stated in the present Constitution, and only in respect of matters referred to the competence of the Union. Beyond

these limits each Constituent Republic exercises its state authority independently. The U.S.S.R. protects the sovereign rights of the Constituent Republics.

4. Each of the Constituent Republics shall have the right of free withdrawal from the Union.

5. The Constituent Republics shall introduce alterations in their respective constitutions to bring them in conformity with the present Constitution.

6. The territory of the Constituent Republics shall not be altered without their consent. For the modification, limitation or repeal of Article 4 of the present Constitution the consent of all the Republics forming the U.S.S.R. is required.

7. A uniform citizenship of the U.S.S.R. is established for citizens of the Constituent Republics.

CHAPTER III

Congress of Soviets of the Union of Soviet Socialist Republics

8. The supreme authority of the U.S.S.R. shall be vested in the Congress of Soviets, and, during the intervals of sessions of the Congresses of Soviets, in the Central Executive Committee of the U.S.S.R., which shall consist of the Council of the Union and the Council of Nationalities.

9. The Congress of Soviets of the U.S.S.R. shall be composed of representatives of City Soviets and Soviets of urban settlements on the basis of 1 deputy for each 25,000 electors, and of representatives of Provincial and District Soviet Congresses on the basis of 1 deputy for each 125,000 inhabitants.

10. The representatives to the Congress of Soviets of the U.S.S.R. shall be elected at the Provincial and District Soviet Congresses. In those Republics which have no provincial or district units, the delegates shall be elected directly at the Congresses of Soviets of the respective Republics.

11. Ordinary Congresses of the Soviets of the U.S.S.R. shall be convened by the Central Executive Committee of the U.S.S.R. once in two years; extraordinary congresses shall be convened by the Central Executive Committee of the U.S.S.R. either on its own initiative, or on the demand of the Council of the Union, or Council of Nationalities, or of any two of the Constituent Republics.

12. Under extraordinary circumstances preventing the convening of

the Congress of the Soviets of the U.S.S.R. at the appointed time, the Central Executive Committee of the U.S.S.R. shall have the right to postpone the convening of the Congress.

CHAPTER IV

THE CENTRAL EXECUTIVE COMMITTEE OF THE UNION OF SOVIET SOCIALIST REPUBLICS

13. The Central Executive Committee of the U.S.S.R. shall consist of the Council of the Union and the Council of Nationalities.

14. The Congress of Soviets of the U.S.S R. shall elect the Council of the Union from among the representatives of the Constituent Republics counted in proportion to the population of each Republic, the number to be determined by the Congress of Soviets of the U.S.S.R.

15. The Council of Nationalities shall be formed of the representatives of the Constituent and Autonomous Soviet Socialist Republics on the basis of five representatives from each; and of the representatives of autonomous areas on the basis of one representative from each. The composition of the Council of Nationalities as a whole shall be subject to confirmation by the Congress of Soviets of the U.S.S.R.

16. The Council of the Union and the Council of Nationalities shall examine all decrees, codes and regulations submitted to them by the *Presidium of the Central Executive Committee and the Council of* People's Commissars of the U.S.S.R., by separate People's Commissariats of the Union, or by the Central Executive Committees of the Constituent Republics; as well as those proposed on the initiative of the Council of the Union and the Council of Nationalities.

17. The Central Executive Committee of the U.S.S.R. issues codes, decrees, regulations, and orders, combines the work of legislation and administration of the U.S.S.R., and determines the scope of activities of the Presidium of the Central Executive Committee and the Council of People's Commissars of the U.S.S.R.

18. All decrees and ordinances determining the general principles of the political and economic life of the U.S.S.R., and also those which introduce fundamental changes in the existing practice of the State organs of the U S.S.R., must be submitted for the examination and ratification of the Central Executive Committee of the U.S.S.R.

19. All decrees, regulations and orders issued by the Central Executive Committee must be immediately carried out throughout the territory of the U.S.S.R.

20. The Central Executive Committee of the U.S.S.R. shall have the right to suspend or repeal decrees, regulations and ordinances of the Presidium of the Central Executive Committee of the U.S.S.R., of the Congresses of Soviets and of the Central Executive Committees of the Constituent Republics, and of other organs of authority within the territory of the U.S.S.R.

21. The regular sessions of the Central Executive Committee of the U.S.S.R., shall be convened by the Presidium of the Central Executive Committee three times a year. The extraordinary sessions shall be convened by decision of the Presidium of the Central Executive Committee of the U.S.S.R., upon the demand of the Presidium of the Council of the Union, or the Presidium of the Council of Nationalities, and also upon the demand of the Central Executive Committee of any one of the Constituent Republics.

22. Legislative bills submitted for consideration by the Central Executive Committee of the U.S.S.R., shall become laws only after having been passed by both the Council of the Union and the Council of Nationalities; they are published in the name of the Central Executive Committee of the U.S.S.R.

23. In case of disagreement between the Council of the Union and the Council of Nationalities, the question at issue shall be referred to an Adjustment Commission appointed by these two organs.

24. If no agreement be reached in the Adjustment Commission, the question shall be referred to a joint session of the Council of the Union and of the Council of Nationalities wherein, in the event that no majority vote of the Council of the Union or of the Council of Nationalities can be obtained, the question may be referred, on the demand of either of these bodies, for decision to either the regular or extraordinary Congress of Soviets of the U.S.S.R.

25. The Council of the Union and the Council of Nationalities each elects a Presidium of nine of its members to arrange its sessions and conduct the work of the latter.

26. In the intervals between sessions of the Central Executive Committee of the U.S.S.R. supreme authority is vested in the Presidium of the Central Executive Committee of the U.S.S.R., formed by the Central Executive Committee of the U.S.S.R., of twenty-seven members, amongst whom are included the whole of the Presidium of the Council of the Union and the Presidium of the Council of Nationalities.

For the purpose of constituting the Presidium of the Central Executive Committee of the U.S.S.R., and the Council of People's

Commissars of the U.S S.R., in accordance with Articles 26 and 37 of this Constitution, a joint session of the Council of the Union and of the Council of Nationalities is called. The voting at the joint session of the Council of the Union and of the Council of Nationalities is effected separately by the Council of the Union and by the Council of Nationalities.

27. The Central Executive Committee elects, in accordance with the number of Constituent Republics, the chairmen of the Central Executive Committee of the U.S.S.R., from among members of the Presidium of the Central Executive Committee of the U.S S.R.

28. The Central Executive Committee of the U.S S.R., shall be responsible to the Congress of Soviets of the U.S.S.R.

CHAPTER V

The Presidium of the Central Executive Committee of the U S.S.R.

29. The Presidium of the Central Executive Committee of the U.S.S R., shall during the intervals between the sessions of the Central Executive Committee of the U.S.S.R., be the highest legislative, executive and administrative organ in the U.S.S.R.

30. The Presidium of the Central Executive Committee of the U.S.S.R., shall have the power to supervise the carrying into effect of the Constitution of the U.S.S R., and the carrying out by all organs of authority of all decisions of the Congress of Soviets and of the Central Executive Committee of the U.S.S.R.

31. The Presidium of the Central Executive Committee of the U.S S.R. shall have the power to suspend or to repeal the decisions of the Councils of People's Commissars and of the individual People's Commissariats of the U.S S.R., and of the Central Executive Committees and the Councils of People's Commissars of the Constituent Republics.

32. The Presidium of the Central Executive Committee of the U.S.S.R. shall have the power to suspend the decisions of the Congresses of Soviets of the Constituent Republics, and subsequently thereto to submit such decisions for examination and ratification to the Central Executive Committee of the U.S.S.R.

33. The Presidium of the Central Executive Committee of the U.S.S.R., shall pass decrees, regulations and ordinances, shall examine and ratify draft decrees and resolutions submitted by the Council of People's Commissars, by the separate departments of the Union of

S.S R, by the Central Executive Committees of the Constituent Republics, their Presidia and by other organs of authority.

34. The decrees and decisions of the Central Executive Committee, of its Presidium, and of the Council of People's Commissars of the U.S.S.R shall be printed in the languages in general use within the Constituent Republics (Russian, Ukrainian, White Russian, Georgian, Armenian, Turko-Tartar).

35. The Presidium of the Central Executive Committee of the U.S.S.R. shall have the power to decide the questions pertaining to the interrelations between the Council of People's Commissars of the U S S R., and the individual People's Commissariats of the U S S.R., on the one hand, and the Central Executive Committees of the Constituent Republics, and their Presidia, on the other hand.

36. The Presidium of the Central Executive Committee of the U.S S R. shall be responsible to the Central Executive Committee of the U.S.S.R.

CHAPTER VI

The Council of People's Commissars of the U.S.S R.

37. The Council of People's Commissars of the U.S.S R. shall be the executive and administrative organ of the Central Executive Committee of the U S S.R., and it shall be formed by the Central Executive Committee of the U S.S R., as follows:

Chairman of the Council of People's Commissars of the U.S.S R ;
Vice-Chairmen;
People's Commissar for Foreign Affairs;
People's Commissar for Army and Navy;
People's Commissar for Foreign and Domestic Trade;
People's Commissar for Transport;
People's Commissar for Posts and Telegraphs;
People's Commissar for Workers' and Peasants' Inspection;
Chairman of the Supreme Council of National Economy;
People's Commissar for Labor;
People's Commissar for Finance;
Director of Central Statistical Board.

38. The Council of People's Commissars of the U S.S R., within the limits of the powers conferred upon it by the Central Executive Committee of the U.S.S.R., and by virtue of the Statute about the Council of People's Commissars, shall issue decrees and regulations which must be executed throughout the territory of the U.S.S.R.

39. The Council of People's Commissars of the U S.S.R. shall examine decrees and regulations submitted by the individual People's Commissariats of the U.S.S.R., or by the Central Executive Committees of the Constituent Republics and by their Presidia

40. The Council of People's Commissars of the U.S.S.R. shall be, in all its work, responsible to the Central Executive Committee of the U.S.S.R., and to its Presidium.

41. Decrees and regulations of the Council of People's Commissars of the U S.S.R. may be suspended and repealed by the Central Executive Committee of the U.S S.R., and its Presidium.

42. The Central Executive Committees of the Constituent Republics and their Presidia may appeal against the decrees and decisions of the Council of People's Commissars of the U.S.S.R. to the Presidium of the Central Executive Committee of the U.S S.R., without suspending their execution.

CHAPTER VII

THE SUPREME COURT OF THE U.S.S.R.

43. In order to maintain revolutionary legality throughout the territory of the U.S.S.R., there shall be created a Supreme Court, attached to the Central Executive Committee of the U.S.S.R., which shall have the power and jurisdiction:

(*a*) To give the Supreme Courts of the Constituent Republics guiding interpretations on questions concerning general Federal legislation;

(*b*) To examine and appeal to the Central Executive Committee of the U.S.S.R., on the motion of the Attorney General of the Supreme Court of the U.S.S.R., against resolutions, decisions and verdicts of the Supreme Courts of the Constituent Republics on the ground of their being in contradiction to the general legislation of the U.S.S.R., or in so far as they affect the interests of other Republics;

(*c*) To give opinions at the request of the Central Executive Committee of the U.S.S.R. on the legality of any regulations made by the Constituent Republics from the point of view of the Constitution;

(*d*) To adjudicate judiciable controversies between the Constituent Republics;

(*e*) To try charges against high officials of the U.S.S.R. for offenses committed in the discharge of their duties.

44. The Supreme Court of the U.S.S.R. shall function through:

(*a*) Plenary sessions of the Supreme Court of the U S.S.R.,

(*b*) Civil and Criminal Departments of the Supreme Court of the U.S.S.R.;

(*c*) Military Division.

45. In its plenary session the Supreme Court of the U S S.R shall consist of fifteen members, including one chairman, one vice-chairman, the chairmen of the plenary sessions of the Supreme Courts of the Constituent Republics, and a representative of the Joint State Political Department of the U.S.S.R. (see Article 61). The chairman, vice-chairman, as well as the other seven members, shall be appointed by the Presidium of the Central Executive Committee of the U S.S.R.

46. The Attorney General of the Supreme Court of the U.S S R. and his deputy shall be appointed by the Presidium of the Central Executive Committee of the U.S.S.R. The duties of the Attorney General of the Supreme Court of the U S S.R. shall include the rendering of opinions on all questions subject to the decision of the Supreme Court of the U.S S.R., to support accusations at its sessions, and in case of non-agreement with the decisions of the plenary session of the Supreme Court of the U.S.S.R., to appeal to the Presidium of the Central Executive Committee of the U.S S.R.

47. The right to submit questions specified in Article 43 for examination by the plenary session of the Supreme Court of the U.S S.R. is reserved only to the initiative of the Central Executive Committee of the U.S.S.R., its Presidium, the Attorney General of the Supreme Court U.S.S.R., the Attorneys General of the Constituent Republics and the Joint State Political Department of the U.S.S.R.

48. Plenary sessions of the Supreme Court of the U.S.S.R. set up special legal tribunals (benches) for examination of.

(*a*) Criminal and civil cases of exceptional importance affecting by their nature two or more of the Constituent Republics; and

(*b*) Cases of personal legal liability of the members of the Central Executive Committee and the Council of People's Commissars of the U.S.S.R.

The acceptance by the Supreme Court of the U.S.S.R. of these cases in its procedure, can take place solely by special resolution, in each case, of the Central Executive Committee of the U.S.S.R. or its Presidium.

CHAPTER VIII

THE PEOPLE'S COMMISSARIATS OF THE U.S.S.R.

49. For the direct conduct of the separate branches of State administration included in the sphere of the Council of People's Commissars of the U.S.S.R., ten People's Commissariats are set up, enumerated in Article 37 of the present Constitution, which shall act in accordance with the Statutes regarding People's Commissariats, confirmed by the Central Executive Committee of the U.S.S.R.

50. The People's Commissariats of the U.S.S.R. shall be divided into: (*a*) Federal People's Commissariats for the entire U.S.S.R., and (*b*) Joint People's Commissariats of the U.S.S.R.

51. The Federal People's Commissariats for the whole U.S.S.R. shall be the following:

Foreign Affairs;
Army and Navy;
Foreign and Domestic Trade;
Transport;
Posts and Telegraphs.

Note: In the matter of regulating domestic trade the People's Commissariat for Foreign and Domestic Trade of the U.S.S.R. enjoys the rights of a Joint People's Commissariat of the U.S.S.R.

52. The Joint People's Commissariats of the U.S.S.R. shall be the following:

Supreme Council of National Economy;
Labor;
Finances;
Worker's and Peasants' Inspection;
Central Statistical Board.

53. The Federal People's Commissariats of the whole U.S.S.R. shall have their plenipotentiary representatives in the Constituent Republics, who shall be directly subordinated to the Federal People's Commissariats.

54. The organs of the Joint People's Commissariats of the U.S.S.R., which fulfill their functions in the territory of the Constituent Republics shall be the People's Commissariats of the same name of these Republics.

55. At the head of the People's Commissariats of the U.S.S.R., stand the members of the Council of People's Commissariats—the People's Commissars of the U.S.S.R.

56. Attached to each People's Commissar, under his chairmanship, is set up a collegium, the members of which are appointed by the Council of People's Commissars of the U.S.S.R.

57. The People's Commissar has the right to make personal decisions on all questions within the competence of the corresponding commissariat, reporting them to the collegium. In case of non-agreement with one or other decision of the People's Commissar, the collegium or individual members thereof, without suspending the execution of the decision, may lodge a protest with the Council of People's Commissars of the U.S.S.R

58. Decrees issued by individual People's Commissariats of the U.S.S.R., may be repealed by the Presidium of the Central Executive Committee of the U.S.S.R., and by the Council of People's Commissars of the U.S.S.R.

59. The decisions of the People's Commissariats of the U.S.S.R. may be suspended by the Central Executive Committees or the Presidia of the Central Executive Committees of the Constituent Republics, whenever such decisions are in manifest conflict with the Constitution of the U.S.S.R., with the legislation of the U.S.S.R., or with the legislation of the respective Constituent Republics. The Central Executive Committees or the Presidia of the Central Executive Committees of the Constituent Republics shall immediately report such suspension to the Council of People's Commissars of the U.S.S.R. and to the corresponding People's Commissar of the U.S.S.R.

60. The People's Commissars of the U.S.S.R. shall be responsible to the Council of People's Commissars, to the Central Executive Committee of the U.S.S.R., and the Presidium thereof.

CHAPTER IX

The Joint State Political Department of the U.S.S.R.

61. In order to combine the revolutionary efforts of the Constituent Republics in the fight against political and economic counter-revolution, espionage and banditism, a Joint State Political Department (O.G.P.U.), is created, attached to the Council of People's Commissars of the U.S.S.R., the chairman of the Department entering the Council of People's Commissars of the U.S.S.R., with the right of advisory vote.

62. The Joint State Political Department (O.G.P.U.) of the U.S.S.R. shall direct the activities of the local branches of the State Political Department (G.P.U.), through its representatives attached to the

Council of People's Commissars of the Constituent Republics, acting in accordance with a special statute ratified by legislative act.

63. The control of the legality of the acts of the Joint State Political Department of the U.S.S.R. shall be exercised by the Attorney General of the Supreme Court of the U.S.S.R., on the basis of a special decree made by the Central Executive Committee of the U.S.S.R.

CHAPTER X

The Constituent Republics

64. *Within the territory of each Constituent Republic* the supreme organ of authority of the latter shall be the Congress of Soviets of the Republics, and during the intervals between congresses, its Central Executive Committee.

65. The inter-relations between the supreme organs of governmental authority of the Constituent Republics and the supreme organs of authority of the U.S.S.R., are defined by the present Constitution.

66. The Central Executive Committees of the Constituent Republics shall elect from among their number their Presidia, which during the intervals between the Central Executive Committee sessions shall constitute the supreme organs of governmental authority.

67. The Central Executive Committees of the Constituent Republics shall establish their own executive organs, which shall be the Councils of People's Commissars, consisting of the following:

Chairman of the Council of People's Commissars;
Vice-Chairman;
Chairman of the Supreme Council of National Economy;
People's Commissar for Agriculture;
People's Commissar for Finance;
People's Commissar for Trade;
People's Commissar for Labor;
People's Commissar for Internal Affairs;
People's Commissar for Justice;
People's Commissar for Workers' and Peasants' Inspection;
People's Commissar for Education;
People's Commissar for Health;
People's Commissar for Social Welfare;
Director of Central Statistical Board,

and also, with an advisory or deciding vote, according to the decisions of the respective Central Executive Committees of the Constituent

Republics, the Plenipotentiaries of the People's Commissariats of the U.S.S.R. for Foreign Affairs, Army and Navy, Foreign and Domestic Trade, Transport, and of Post and Telegraphs.

68. The Supreme Council of National Economy and the People's Commissariats for Trade, Finance, Labor, Workers' and Peasants' Inspection and the Central Statistical Board of the Constituent Republics, while subordinate to the Central Executive Committees and Councils of People's Commissars of the Constituent Republics, shall, in their activities, carry out the instructions of the corresponding People's Commissariats of the U.S.S.R.

69. The right of amnesty, as well as the right of pardon and rehabilitation in regard to citizens condemned by the judicial or administrative organs of the Constituent Republics shall be the prerogative of the Central Executive Committees of these Republics.

CHAPTER XI

THE EMBLEM, THE FLAG AND THE CAPITAL OF THE U.S.S R.

70. The State emblem of the U S.S.R. shall consist of a sickle and hammer mounted on a terrestrial globe illuminated by sunrays and surrounded by ears of grain; the ears are intertwined with ribbons, bearing the inscription, in the six languages mentioned in Article 34, "Proletarians of all countries, unite!" Above the emblem is a five-pointed star.

71. The flag of state of the U.S.S.R. shall be of red or scarlet cloth; in the upper corner at the staff are a golden sickle and hammer, surmounted by a five-pointed star with a golden border. Proportion of width to length is 1:2.

72. The capital city of the U.S.S.R shall be the City of Moscow.

APPENDIX II

TREATY OF PEACE BETWEEN POLAND, RUSSIA AND THE UKRAINE, SIGNED AT RIGA, MARCH 18TH 1921

(*Sborn. Deistv. Dogov. S.S.S.R*, I, 1924, pp. 121–147; VI, 133–135, L N.T.S)

ART. 6:

(1) All persons above the age of 18 who, at the date of the ratification of the present Treaty are within the territory of Poland and on August 1st, 1914, were nationals of the Russian Empire and are, or have the right to be, included in the registers of the permanent population of the ancient kingdom of Poland, or have been included in the registers of an urban or rural commune, or of one of the class organizations in the territories of the former Russian Empire, which formed part of Poland, shall have the right of opting for Russian or Ukrainian nationality. A similar declaration by nationals of the former Russian Empire of all other categories who are within Polish territory at the date of the ratification of the Present Treaty shall not be necessary.

(2) Nationals of the former Russian Empire above the age of 18, who at the date of the ratification of the present Treaty are within the territory of Russia and of the Ukraine and are, or have the right to be, included in the register of the permanent population of the ancient Kingdom of Poland, or have been included in the registers of an urban or rural commune, or of one of the class organizations in the territories of the former Russian Empire, which formed part of Poland, shall be considered as Polish citizens, if they express such a desire in accordance with the system of opting laid down in this article. Persons above the age of 18 who are within the territory of Russia and of the Ukraine shall also be considered as Polish citizens if they express such a desire, in accordance with the system of opting laid down in this Article, and if they provide proofs that they are descendants of those who took part in the Polish struggle for independence between 1830 and 1865, or that they are descendants of persons

who have for at least three generations been continuously established in the territory of the ancient Polish Republic, or if they show that they have by their actions, by the habitual use of the Polish language and by their method of educating their children, given effective proof of their attachment to Polish nationality.

(3) The regulations concerning opting also apply to persons who conform to the conditions laid down in paragraphs 1 and 2 of the present Article in so far as such persons are not resident outside the frontiers of Poland, Russia and the Ukraine, and are not nationals of the State in which they reside.

(4) The choice made by the husband shall bind his wife and such children as are under the age of 18, in so far as husband and wife have not agreed to the contrary. If they cannot agree, the wife shall have the right of free option, in this case the choice of the wife shall involve such of the children as she is bringing up. In the case of orphans, the choice shall be postponed until they have reached the age of 18, and the periods provided for in this Article shall commence to run from that date. In the case of other persons who are not persons in law, the choice shall be made by their guardian.

(5) The declaration of option shall be made to the Consul or other official representative of the State for which the person wishes to opt, within the period of one year from the date of ratification of the present Treaty; in the case of persons residing in the Caucasus and in Russian Asia, this period is prolonged to fifteen months. These declarations shall be submitted to the authorities of the State in which such persons may be.

The two Contracting Parties undertake, within one month from the date of the signature of the present Treaty, to publish and communicate to each other the provisions with regard to the authorities who will be called upon to receive the declarations of option. The Parties also undertake to communicate to each other through diplomatic channels, within a period of three months, the lists of persons who have made declarations of option and to state which declarations are recognised as valid and which are not.

(6) Persons who have made their declaration of option shall not, in virtue of that declaration, acquire the nationality which they have chosen. When the person making the declaration conforms to the conditions laid down in paragraphs 1 and 2 of this Article, the Consul or other official representative of the State in favor of which the option is exercised, shall give his opinion on the matter and shall forward to the Ministry (People's Commissariat) of Foreign Affairs, a certificate

relating thereto, together with the documents of the person opting. Within the period of one month from the date upon which these certificates are communicated, the Ministry (People's Commissariat) of Foreign Affairs shall either inform the above-mentioned representative that his decision is contested, in which case the question shall be settled by diplomatic means, or shall confirm the representative's decision and shall forward him a certificate establishing the loss of the former nationality by the person opting, accompanied by copies of all documents belonging to the person opting, except the document concerning the right of residence.

If, on the expiration of one month the Ministry (People's Commissariat) of Foreign Affairs has communicated no observations to the representative, it shall be considered that the latter's decision has been accepted.

Should the person opting conform to all the conditions laid down in paragraphs 1 and 2, the State in favour of which his choice is made shall not have the right to refuse to grant him its nationality, and the State in which the person opting resides shall not have the right to refuse to release him from his former nationality.

The decisions of the Consul and of any other official representative of the State in favour of which the option is exercised, shall be submitted within a period of not more than two months from the date upon which the declaration of option is made; in the case of persons residing in the Caucasus or in Russian Asia, this period is extended for a further three months. The declaration of option shall be free from all stamp and passport duties, from all other charges and from duties in respect to publication.

(7) Persons whose declaration of option has been considered valid may proceed freely to the State in favour of which they have opted. The Government of the State in which these persons reside may, however, compel them to make use of the right of departure which is granted to them; in this case their departure shall take place within a period of six months from the date upon which the notice regarding this matter is served. The persons opting shall have the right to retain or to sell the moveable and immoveable property, which they lawfully possess; in case of departure they may take such property with them in accordance with the regulations laid down in Annex 2 of the present Treaty. Property which exceeds the quantity which may be exported, and which is left on the spot, may be transported later when transport conditions are improved. The export of property shall be free from all customs duties and taxes.

(8) Until such time as their option has been declared valid, the persons opting shall be subject to all the laws in force in the State in which they are resident; from the date upon which they make their declaration of option they shall be considered as foreigners.

(9) If a person, whose declaration of option has been recognized as valid, is the defendant in any legal prosecution or enquiry, or is undergoing punishment, such person shall be sent under escort with all the relevant documents, to the State for which he has opted, if that State requests his extradition.

(10) Persons whose declaration of option has been pronounced valid shall be fully recognized as citizens of the State, of their choice; persons opting shall enjoy to an equal extent and without exceptions, all rights and privileges granted to citizens of that State, in virtue either of the present Treaty or of subsequent Conventions, if at the date of the ratification of the present Treaty they were already nationals of the State for which they opt.

Appendix III

DECREE OF THE ALL-RUSSIAN CENTRAL EXECUTIVE COMMITTEE OF DECEMBER 15, 1921, ON FORFEITURE OF SOVIET CITIZENSHIP BY CERTAIN CATEGORIES OF PERSONS

(*Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1922, pp. 7–8)

The All-Russian Central Executive Committee and the Council of Peoples' Commissaries Decree:

1. After the publication of this decree, all persons of the following categories lose their Russian nationality:

(*a*) persons residing abroad without interruption for more than 5 years who do not take out, before June 1, 1922, their foreign passports [*i.e.*, Soviet passports for travel abroad] or corresponding certificates.

Note: This term does not apply to countries where there is no representative of the R.S.F.S.R.; in such countries the period shall be determined after the establishment of such representations.

(*b*) persons who left Russia after Nov. 7, 1917, without the permission of Soviet authorities.

(*c*) persons who voluntarily served in the armies engaged in hostilities against the Soviets, or who participated in any kind of counter-revolutionary organizations.

(*d*) persons who had the right to opt for Russian nationality and who did not take advantage of it within the given time.

(*e*) persons who do not fall within clause *a* of this Art. 1, and who do not register in the missions of the R.S.F.S.R. in the time given herein and in the note hereto.

2. Persons enumerated in clauses *b* and *c* of Art. 1 may file petitions until June 1, 1922, through the nearest [Soviet] representatives, to the All-Russian Central Executive Committee, for restoration in their rights.

APPENDIX IV

CIRCULAR OF THE PEOPLE'S COMMISSARY FOR FOREIGN AFFAIRS OF DECEMBER 8, 1921, NO. 26, CONCERNING THE ADMISSION OF FOREIGNERS TO RUSSIAN [SOVIET] CITIZENSHIP

(Egor'ev and others, *Pravovoe Polozhenie Fizicheskikh i Iuridicheskikh Lits S.S.S.R. za granitsei*, pp. 12–13)

THIS instruction regarding the admission of foreigners to Russian [Soviet] citizenship is issued for information and guidance in the future.

1. [Enumerates the Soviet organs authorized to admit foreigners to Soviet citizenship.]

Note: The petition must include: the name, father's name and surname, age, citizenship, and address of the petitioner; the enumeration of persons who follow the citizenship of the petitioner; and an application for admission to citizenship of the R.S.F.S.R.

2. To the application must be attached:

(*a*) documents proving the foreign citizenship of the petitioner, his family status, and all information submitted by him;

(*b*) [filled in] questionnaire in 3 copies.

3. After the application is received, the Administrative Division [of the People's Commissary of Foreign Affairs, if the petitioner lives within Soviet territory, or the Representative Plenipotentiary, if the petitioner lives abroad] makes an investigation concerning the petitioner and concerning the authenticity of the information submitted. Thereupon the application, together with all the material collected, is forwarded by the Administrative Division [of the People's Commissary of Foreign Affairs] to the presidium of the district Central Executive Committee, and by the Representative Plenipotentiary (through the People's Commissary of Foreign Affairs) to the Presidium of the All-Russian Central Executive Committee, which then decides on the matter.

4. The notification of the decision is then forwarded in writing to the petitioner. Upon his admission to Soviet citizenship, a verified copy of the decree to that effect is also forwarded; if [Soviet] citizenship is denied, he is informed of the grounds for such refusal.

5. Persons admitted to Soviet citizenship are required to sign a statement, within a month from the date of receiving the notification referred to in Article 4, that they are familiar with the contents of Article 8 of the Decree of the Council of Peoples' Commissaries of August 22, 1921,[1] whereupon their foreign passports are exchanged for the passports established for the citizens of the R.S.F.S.R.

6.[2] Simultaneously with forwarding the notification mentioned in Article 3, a copy of the decision and one copy of the questionnaire is forwarded through the People's Commissary for the Interior to the political-economic section of the People's Commissary of Foreign Affairs for publication, and for the information, through the Soviet diplomatic mission in the country to which the foreigner owed allegiance, of the respective foreign government, and for the registration [of his name] in the "Register book for foreigners admitted to Russian [Soviet] citizenship."

7. When foreigners residing abroad are admitted to citizenship the provisions of Articles 3 to 5 are applicable with the following exceptions:

(*a*) If by his national laws, the foreigner acquiring Russian citizenship does not lose his former allegiance, he must attach to his application a certificate from his Government that the latter has no objections to his becoming a Russian citizen.

(*b*) If the foreigner acquiring Russian citizenship at the time of such acquisition resides outside the state whose citizenship he is renouncing, the Economic-Legal Division of the People's Commissariat of Foreign Affairs, simultaneously with the notification referred to in Article 6 of these Instructions, instructs the [Soviet] Representative Plenipotentiary in the country of that foreigner's sojourn to have him sign the statement referred to in Article 5.

(*c*) In issuing Soviet passports to foreigners admitted to Russian citizenship, the Soviet Representative Plenipotentiary is guided by the laws of the state where the foreigner resides.

[1] This Article provides that foreigners admitted to Soviet citizenship have neither rights nor obligations which allegiance to a foreign state may entail.

[2] This Article only, Egor'ev and others, *Pravovoe Polozhenie Inostrantsev v S.S.S.R.*, p 25.

Appendix V

STATUTE ON CITIZENSHIP OF THE UNION OF THE S.S.R. OF APRIL 22, 1931

(Sobr. Zak. i Rasp. S.S.S.R., 1931, I, pp. 342–344)

1. With the formation of the U S S.R., a single union citizenship is established for the citizens of the union republics (Article 7 of the constitution of the U.S S R). Each citizen of any of the union republics is [simultaneously] a citizen of the U.S S.R.

2. A citizen of the U.S.S.R. is [simultaneously] the citizen of that union republic in which he resides permanently. However, when by his nationality or by his origin he considers himself connected with one or another union republic he may select the citizenship of that republic.

3. Every person in the territory of the U.S.S.R. is recognized as a citizen of the U.S.S.R. in so far as there is no proof of his being a citizen of a foreign state.

4. Foreign citizens admitted to citizenship of the U S S.R. enjoy no rights and have no duties derived from allegiance to a foreign state.

5. Citizens of the U.S.S.R. have all the rights and perform all the duties established for citizens by the laws of the U.S.S R. and by the laws of the union republic in which they reside.

6. Foreign citizens, workers and peasants residing in the U.S.S R for the purpose of laboring therein, enjoy all political rights [given] to citizens of the U.S.S R.

7 A person is recognized as a citizen of the U S S R. by virtue of birth when both parents, or one of them, at the time of his birth were citizens of the U.S.S R.

8. When a citizen of the U S.S.R. marries a person who is a foreign citizen, each retains his [or her] citizenship. The change of citizenship upon an expressed desire [in such cases] is permitted [to take place] in a simplified manner (Article 16).

9. In case of a change of nationality by both parents, when both of them become citizens of the U.S.S.R., or, vice versa, when both

cease to be such, the nationality of their children under 14 changes correspondingly.

To change the nationality so as to become citizens of the U.S.S.R., children over 14 but under age must have the consent of their parents.

The citizenship of children over 14 is not changed when the parents cease to be citizens of the U.S.S.R.

10. Citizenship in the U.S.S.R. is acquired also by minor children living with their parent who is taking up [Soviet] citizenship, upon a special request by the parent. For children over 14 to acquire citizenship [of the U.S.S.R.], their consent is required.

Children under 14 living with their foreign parent follow his [her] citizenship, upon the declaration of this parent, if the other parent, the citizen of the U.S.S.R., has died or has severed all connection with the children.

When one of the parents ceases to be a citizen of the U.S.S.R. while the other parent has died or has severed completely connection with the children, the latter under 14 follow the citizenship of their parent who ceases to be a citizen of the U.S.S.R.

11. The children of citizens of the U.S.S.R. adopted by foreign citizens retain their citizenship of the U.S.S.R.

12. Foreign citizens residing in the U.S.S.R. are admitted to the citizenship of one of the union republics, and thereby also to the citizenship of the U.S.S.R., by decree of the Presidium of the Central Executive Committee of the U.S.S.R., or by the Presidium of the Central Executive Committee of the union republic in which they reside.

The decree of the Presidium of the Central Executive Committee of the union republic refusing to admit to citizenship of the U.S.S.R. may be protested before the Presidium of the Central Executive Committee of the U.S.S.R.

13. Foreign citizens residing abroad are admitted to the citizenship of one of the union republics, and thereby also to the citizenship of the Union of S.S.R., by decree of the Presidium of the Central Executive Committee of the U.S.S.R., and in case the petition has been filed with the Presidium of the Central Executive of the union republic—by decree of the latter.

14. Denaturalization of citizens of the U.S.S.R. is allowed:

A. For persons residing within the U.S.S.R., by decree of the Presidium of the Central Executive Committee of the U.S.S.R., or of the Presidium of the Central Executive Committee of the corresponding union republic.

Persons who have been refused by the Presidium of the Central

Executive Committee of the union republic may file a protest in the Presidium of the Central Executive Committee of the U S.S R.

B. For persons residing abroad, by decree of the Central Executive Committee of the U.S.S R

15. Persons who have lost their citizenship of the U.S S.R., or of the union republic, may be restored to the citizenship of the U S S.R. by decree of the Presidium of the Central Executive Committee of the U.S.S R., or by decree of the Presidium of the Central Executive Committee of the union republic whose citizens they were.

Persons whose citizenship of the U S S.R or of the union republic has been forfeited may be restored to their citizenship by the Presidium of the Central Executive Committee of the U S S R., or by the Presidium of the union republic by whose decree the citizenship had been forfeited.

16. The acquisition of citizenship of the U.S.S R. and the loss of the same, besides [being effected in] the general way as shown in the foregoing articles of the present statute, may take place in a simplified manner, namely:

(*a*) by decree of the regional executive committee, the Central Executive Committee of the autonomous republic, or the executive committee of the autonomous region, if the applicant resides in the territory of the U.S.S.R.;

(*b*) by decree of the Representative Plenipotentiary of the U.S.S.R. if the applicant resides abroad.

The Central Executive Committees of the union republics may give permission to admit to citizenship of the U.S.S R. in a simplified manner, and to release from such citizenship in the same manner, persons residing in the territory of the U.S S.R. to separate district (*raion*) executive committees, and in cities which are recognized as self-governing administrative and economic units,—to the city Soviets.

This simplified method is applied in the following instances:

A. In admitting to [Soviet] citizenship foreign workers and peasants residing in the U.S.S.R. for purposes of labor, as well as of foreigners enjoying the right of the political asylum, as a result of prosecution for revolutionary activity;

B. In changing the nationality in connection with marriage (Article 8).

Note: The authorities enumerated in this Article have the right to refuse to apply [this] simplified method and may advise the petitioners to apply [for admission] in the usual way to the Presidium of the

Central Executive Committee, either of the U.S.S.R., or of the union republic.

17. Forfeiture of the citizenship of one of the union republics, and thereby also of the citizenship of the U.S.S.R., may take place upon the decree of the Central Executive Committee of the U.S.S.R., or of the Presidium of the Central Executive Committee of the corresponding union republic.

18. Instructions relative to the application of the present statute are issued by the People's Commissariat for Foreign Affairs with the consent of the United State Political Administration [OGPU].

APPENDIX VI

DECREE OF THE COUNCIL OF PEOPLES' COMMISSARIES OF MAY 22/JUNE 4, 1918, CONCERNING THE ABOLITION OF THE RANKS OF DIPLOMATIC REPRESENTATIVES AND THE DENOMINATION OF THESE AS PLENIPOTENTIARY REPRESENTATIVES OF THE RUSSIAN SOCIALIST FEDERATED SOVIET REPUBLIC

(*Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1917–1918, p. 480)

1. THE titles of ambassadors, ministers, and other diplomatic representatives are abolished, and all representatives of the Russian State accredited to foreign states shall be denominated plenipotentiary representatives of the Russian Socialist Federated Soviet Republic.

2. In conformity with the fundamental principle of international law,—that states participating in international intercourse have equal rights,—all diplomatic agents of foreign states accredited to the Russian Socialist Federated Soviet Republics shall be considered equal plenipotentiary representatives, regardless of their rank.

APPENDIX VII

DECREE OF THE COUNCIL OF PEOPLES' COMMISSARIES OF THE R.S.F.S.R. NOVEMBER 4, 1921. REGULATIONS RELATING TO TRANSIT IN THE TERRITORY OF THE RUSSIAN SOCIALIST FEDERATED SOVIET REPUBLIC OF FOREIGN DIPLOMATIC COURIERS AND THE TRANSPORTATION OF DIPLOMATIC MAIL.

(*Sobr. Uzak. i Rasp. R.S.F.S.R.*, 1921, pp. 749–751)

Article 1. The Russian Socialist Federated Soviet Republic grants to each foreign government the privilege of sending its diplomatic couriers through its territories not more than twice a week, with all rights and privileges granted to them by international law:

(*a*) For communications of the Department of Foreign Affairs in the foreign country with its diplomatic representatives residing in the R.S.F.S.R., and vice versa;

(*b*) For transit-passage through the territories of the R.S.F.S.R. of foreign diplomatic couriers despatched by the Department of Foreign Affairs of a foreign government to their diplomatic representatives residing in countries friendly to the R S.F.S.R., and vice versa.

Article 2. In accordance with the present Decree only those foreigners who have a diplomatic passport, legally viséed, and who are accompanying diplomatic mail conforming to the requirements established by this decree, may have the rights and privileges of diplomatic couriers.

Article 3. All military, civil, railway, and other authorities in the R.S.F.S.R, in fulfillment of the regulations of the present decree, must give all possible assistance in order that these diplomatic couriers shall proceed promptly along their route without hindrance, and that the safety of the mail and diplomatic pouches be assured

Article 4. A diplomatic courier shall be admitted into the territories of the R.S.F.S.R. on presenting the visé on his passport given

by the competent plenipotentiary representative of the R.S.F.S.R.; but only at the frontier station indicated in the visé.

On returning, the diplomatic courier must have on the passport a diplomatic visé of the People's Commissariat for Foreign Affairs and must depart from the station indicated in the visé.

Article 5. Diplomatic couriers must be provided with a courier list legalized by the seal of the Department of Foreign Affairs of the appropriate foreign government and with the proper signatures, but on their return and passing from or into a territory of a third state, in the cases provided in Article 1, paragraph 2, of the present decree, the courier list must be legalized by the seal of the competent diplomatic representative, and provided with the signature of the chief of the said diplomatic representative [*sic*], or his substitute.

Article 6. All pouches of a diplomatic courier in transit, addressed to the diplomatic legation or to a Department of Foreign Affairs must have a wax seal affixed by the Department of Foreign Affairs of the respective state or by the diplomatic representation of the same and have the inscription "*Expedition officielle,*" and must be noted under an appropriate number in the courier list.

Note: A diplomatic courier must be bound exclusively to the address of the diplomatic representation or to the appropriate Department for Foreign Affairs.

Article 7. The total weight of exported or imported diplomatic mail, as provided by the present decree, must not exceed in each separate instance 16 kilograms (40 Russian pounds).

Article 8. Diplomatic mail in accordance with the requirements of Articles 5, 6, and 7 of the present decree, if intact, is not subject to inspection either at the frontier station, or in transit in the territory of the R.S.F.S.R.

Note: The courier list can be verified as to the accuracy of its form and the correspondence of the numbers of packages indicated in it with the numbers and addresses on the packages on hand, while the diplomatic mail, provided it is intact, can be verified in regard to the presence of the necessary seals and correspondence to the indication of the courier list.

Article 9. Each diplomatic courier may be accompanied by an attendant. The latter, being provided with a diplomatic passport and the necessary visés indicated in Article 4 of the present decree, has the privileges of a diplomatic courier, with the exception of the right of carrying diplomatic mail independently.

Article 10. Besides the official diplomatic mail each diplomatic pouch

may carry official diplomatic baggage of a diplomatic representative or of a Department of Foreign Affairs of that state.

The above-mentioned baggage must consist only of printed matter and of articles of provision or general use within the limits fixed by the R S.F.S.R. and in quantities not exceeding two poods (80 pounds) per month for each member.

Article 11. Before the departure, the diplomatic baggage shall be inspected by a competent member of the courier service of the People's Commissariat for Foreign Affairs, together with a special appointee for this matter of the diplomatic representation of the foreign state. Thereafter the pouch shall be sealed with wax seals of both of these institutions and checked with the list drawn up in accordance with the order established in Article 5 of the present decree, furnished with the seals of both the above-mentioned institutions, and by signatures of both persons commissioned to examine the pouch.

Diplomatic pouches in transit carried by diplomatic couriers when complying with the regulations of Articles 10 and 11 of the present decree, are free from customs inspection.

Note: The list of articles in the diplomatic pouch and the pouch itself can be inspected only within the limits indicated in the note to Article 8 of the present decree.

Article 12. With the exception of diplomatic mail and diplomatic baggage, as indicated in Articles 8 and 10 of the present decree, all baggage of a diplomatic courier, as well as that of the attendants, as for instance, personal effects, etc., are subject to inspection on general principles.

Article 13. A diplomatic courier and his attendants while traveling in railway carriages belonging to the R.S.F S.R., not excluding diplomatic carriages, must pay for themselves and for personal baggage, as well as for the diplomatic baggage provided in Articles 10 and 11 of the present decree, all charges in accordance with the provisions of the decrees in effect.

Article 14. The present decree shall be applied subject to modifications provided for in treaties in force between the R S.F.S R. and other states on the principle of reciprocity.

APPENDIX VIII

GUIDING INSTRUCTIONS FOR THE REPRESENTATIVES PLENIPOTENTIARY OF THE U.S.S.R. ABROAD OF NOV. 21, 1924

(Sobr. Zak. i Rasp. S.S.S.R., 1924, I, pp. 402–03)

THE Presidium of the Central Executive Committee of the Union of the U.S.S.R. has decreed:

To instruct the Representatives Plenipotentiary to take notice of the following:

"The recognition of the Union of S.S.R. by a number of states, which took place recently, as well as the recognition which undoubtedly will be accorded to us by the remaining states, brings Soviet diplomacy into normal relations with the diplomacy of the capitalist states on the basis of exchange of diplomatic missions, etc.

"This important and valuable gain under normal conditions implies important political and economic benefits for the parties involved, but at the same time it is confronted, or may be confronted, with certain specific difficulties resulting from the fundamental differences between the social order and customs of the Soviet state and all other states.

"It appears essential to make these problems clear in order to remove beforehand misunderstandings which may otherwise arise, and which are extremely undesirable from the point of view of the development of normal international relations and ties.

"It goes without saying that diplomatic missions are appointed by each of the parties establishing diplomatic relations for purposes which exclude propaganda in the country to which they are accredited The Soviet diplomatic missions follow and are to follow this principle with absolute strictness. Yet, at the same time, each Soviet diplomatic mission represents its republic, *i.e.*, the State of Workers and Peasants, where a different social order prevails, one determined by the social and moral ideals of the laboring classes. In conformity with these conditions, it is quite apparent that the Soviet Representatives accredited to foreign governments must exercise, as well in their private

life as in their official diplomatic functions, the simplicity of form and the economy in expenditures fitting the ideals of the Soviet régime. Refusal to take part in one or another external ritual, which usually is expected from a diplomat, but under no condition imposed upon him, cannot, therefore, be interpreted as an unfriendly act Equally, the abstinence of Soviet representatives from participation in manifestations which are [obviously] monarchical, or generally contradictory to the Soviet régime, under no condition can or should be construed as an act of propaganda or as a political demonstration. In its turn, the Soviet government obviously will not see any signs of unfriendliness in cases when the diplomats of friendly states may consider it contrary to the morals or customs of their country to take part in the celebrations or assemblies where demonstrations of a revolutionary nature take place. We have no doubt that this mutual and considerate attitude toward the essential differences between the states entering into normal diplomatic relations will guarantee a perfectly friendly working basis without any unnecessary difficulties or obstacles, under conditions which will not meet with public disapproval of the countries involved."

The Chairman of the TzIK of the Union of S.S.R.:
M. KALININ
The Secretary of the TzIK of the Union of S.S.R.:
A. ENUKIDZE

APPENDIX IX

ORDINANCE OF THE PRESIDIUM OF THE CENTRAL EXECUTIVE COMMITTEE OF THE U S S.R. OF MAY 22, 1925, AMENDING THE STATUTE ON THE PEOPLE'S COMMISSARIAT FOR FOREIGN AFFAIRS

(*Sobr. Zak. i Rasp. S.S S R*, 1925, I, p. 530)

ARTICLES 13, 14, 15, 16, and 17 of the Statute of the People's Commissariat for Foreign Affairs are amended to read as follows:

Article 13. Plenipotentiary representatives of the Union of Socialist Soviet Republics accredited to foreign governments, and also chiefs and members of delegations who are chosen for negotiation and conclusion of international treaties which must be submitted for ratification, shall be appointed and recalled by decision of the Central Executive Committee of the Union of Socialist Soviet Republics or its Presidium.

Article 14. Letters of appointment or of recall given to the plenipotentiary representatives of the Union of Socialist Soviet Republics, and letters conferring full powers on chiefs and members of delegations appointed for the negotiation and conclusion of international treaties to be submitted for ratification, shall be signed by the President and Secretary of the Central Executive Committee of the Union of Socialist Soviet Republics and countersigned by the People's Commissary for Foreign Affairs.

Article 15. Chiefs of representations and delegations with powers and privileges less than those of the plenipotentiary representatives, representatives of the Union of Socialist Soviet Republics in international commissions acting in accordance with treaties concluded by the Union of Socialist Soviet Republics, and also chiefs and members of delegations appointed for negotiation and conclusion of international treaties not to be submitted for ratification, shall be appointed and recalled by the decision of the Council of the Peoples' Commissaries of the Union of Socialist Soviet Republics.

Article 16. Credentials for persons mentioned in Article 15 of the

present law shall be issued under the signature of the President of the Council of the Peoples' Commissaries of the Union of Soviet Socialist Republics and countersigned by the People's Commissary for Foreign Affairs.

Article 17. The People's Commissariat for Foreign Affairs shall appoint:

(*a*) *Chargés d'affaires* to substitute for plenipotentiary representatives during their absence, or upon recall pending the apointment of a new plenipotentiary representative.

(*b*) Agents, counselors, secretaries, attachés to plenipotentiary representations, and other diplomatic missions and delegations.

Note: In case plenipotentiary representatives of the U.S.S.R. reside in territories of special interest to one of the allied Republics, the People's Commissariat for Foreign Affairs shall appoint a counselor and secretaries in accordance with the consent of the Government of the allied Republic concerned.

Appendix X

DECREE OF THE CENTRAL EXECUTIVE COMMITTEE AND THE COUNCIL OF PEOPLES' COMMISSARIES OF THE U.S.S.R. ON THE METHOD OF COMMUNICATION OF THE GOVERNMENT ORGANS AND OFFICIALS OF THE U.S.S.R. AND UNION REPUBLICS WITH THE GOVERNMENT ORGANS AND OFFICIALS OF FOREIGN STATES OF AUGUST 27, 1926

(*Sobr. Zak. i Rasp S.S.S.R.*, 1926, I, pp. 1018–1019)

The Central Executive Committee and the Council of Peoples' Commissaries of the U.S.S.R. have jointly decreed:

I

1. The Communications of the Government organs and officials of the U.S.S.R. and Union Republics with the Government organs and officials of foreign states abroad is effected through the People's Commissariat for Foreign Affairs of the U.S.S.R.

Any other manner of communication may take place only upon express stipulation of law to that effect, or of [similar] provision in treaties in force, or upon a special agreement between the given government organs of the U.S.S.R. or of the Union Republics and the People's Commissariat for Foreign Affairs.

2. The Communications of Government organs and officials of the U.S.S.R., or Union Republics with foreign diplomatic missions within the territory of the U.S.S.R., are effected through the People's Commissariat for Foreign Affairs, or according to directions, or with its consent.

Note 1: The Central Administration of the People's Commissariat for Foreign and Domestic Trade of the U.S.S.R. has the right to communicate directly with Commercial Counsels [Advisers] and attachés of the foreign diplomatic missions on all current matters having no political character; on all matters of principle developing out of such

communications, the People's Commissariat for Foreign and Domestic Trade of the U.S.S.R. must immediately inform the People's Commissariat for Foreign Affairs.

Note 2: The method of communication of the state organs and officials of the U.S.S.R. and of the Union Republics with the foreign consular agencies in the U.S.S.R. is to be determined by the People's Commissariat for Foreign Affairs in conformity with the treaties in force and with the laws of the U.S.S.R., and, in case of need, by agreement with the respective Union Republic. The method of communication of the military and naval authorities of the U.S.S.R. with foreign military and naval attachés is to be determined by agreement between the People's Commissariat for Foreign Affairs and the People's Commissariat for Military and Naval Affairs.

3. In case the government offices and officials of the U.S.S.R., or of the Union Republics, receive from foreign Government Offices or Officials abroad, or from foreign diplomatic missions in the U.S.S.R., written communications of a political or economic nature, they must forward such communications to the People's Commissariat for Foreign Affairs without answering them, and must submit all available information on the matter involved in order to facilitate reply by the People's Commissariat for Foreign Affairs to such foreign state organs or officials.

In case of personal interviews with representatives of foreign state organs, or of foreign diplomatic representatives in the U.S.S.R. on the above matters, the government organs and officials of the U.S.S.R. or of the Union Republics must restrict themselves to referring them to the People's Commissariat for Foreign Affairs, and notify the latter immediately of the subject of the interview.

4. The method of communication mentioned in Article 3 does not apply to the government organs and officials of the U.S.S.R. and Union Republics, whose functions involve matters of cultural or routine character (in particular, it does not apply to institutions of learning, postal-and-telegraph offices, offices and agencies of the railroad, water and air transportation lines, customs offices, militia, fire protection, savings banks, information bureaux, etc.) provided the action is within the limits of the competence of these offices or persons.

5. Government officials of the U.S.S.R. and of the Union Republics violating the provisions of this decree will be held responsible, both criminally and administratively.

. . . .

Appendix XI

REGULATIONS CONCERNING DIPLOMATIC MISSIONS AND CONSULAR INSTITUTIONS OF FOREIGN STATES IN THE TERRITORY OF THE UNION OF SOCIALIST SOVIET REPUBLICS, APPROVED BY THE CENTRAL EXECUTIVE COMMITTEE AND THE COUNCIL OF THE PEOPLES' COMMISSARIES OF THE U.S.S.R., JANUARY 14, 1927

(*Sobr. Zak. i Rasp. S.S.S.R.*, 1927, I, pp. 68–74)

I

The Diplomatic Missions of Foreign States

1. Representatives of foreign states accredited to the Central Executive Committee of the U.S.S.R., or to the People's Commissariat for Foreign Affairs, are recognized as diplomatic representatives of these states.

2. Diplomatic representatives and members of diplomatic missions of foreign states, *i.e.*, counselors (including commercial counselors), first, second, and third secretaries and attachés (including commercial, financial, military, and naval attachés) possess, on the basis of reciprocity, all the rights and privileges attached to their functions in accordance with the rules of international law.

In particular, the diplomatic representatives and the members of the diplomatic missions mentioned above:

(*a*) Enjoy personal inviolability and, in consequence, may not be subjected to arrest or to administrative or judicial detention;

(*b*) Are not subject to the jurisdiction of the judicial institutions of the U.S.S.R. or of the Federated Republics in criminal matters, unless there be consent of the government of the respective foreign state, and are subject to the jurisdiction of the judicial institutions of the U.S.S.R. and of the Federated Republics in civil matters only within the limits fixed by the rules of international law or by agreements with the respective states; they are also not obliged to appear as witnesses in judicial matters, and, in case of their consent

to give such testimony, they are not obliged to present themselves for this purpose before the tribunals;

(*c*) Are exempt from all direct taxes collected for the central or local Government, as well as from personal contributions in kind or in money;

(*d*) Are authorized to receive printed works within the limits of their personal needs, free from customs duties, and without any hindrance from abroad, and to send back such objects abroad under the same conditions.

Note 1: The People's Commissariat for Foreign Affairs is authorized to extend the rights and privileges provided for by the present article to diplomatic representatives and to members of diplomatic missions of foreign states accredited to the governments of third states while in transit through the territory of the U.S.S.R.

Note 2: The rights and privileges provided for by the present article are extended to the spouses and minor children of the persons here indicated.

3. Diplomatic representatives of foreign states are authorized to correspond, without any hindrance, with their governments and with the diplomatic representatives of their country in third states, by the use of telegrams, clear or in cipher, by diplomatic couriers or by post, as well as to correspond without any hindrance, either by post or by the use of telegrams, whether clear or in cipher, with the consular representatives of their country in the territory of the U.S.S.R.

4. The premises occupied by diplomatic missions, as well as the premises inhabited by persons mentioned in Article 2 and their families, are inviolable. Searches and seizures in these premises may be effected only on the request or with the consent of the diplomatic representative; the presence of a representative of the public prosecutor and of a representative of the People's Commissariat for Foreign Affairs, if such a representative can be found in the given locality, being obligatory. These premises may not be placed under seal. Access to these premises may not take place otherwise than with the consent of the diplomatic representative. Nevertheless, the inviolability of these premises gives no right to retain anyone there by force, or to give asylum to persons against whom orders of arrest have been delivered by the competent organs of the U.S.S.R. or of the Federated Republics.

5. The fact that a person belongs to the category of the persons mentioned in Article 2 and in the notes to the said article, shall be certified by documents to this effect delivered by the People's Commissariat for Foreign Affairs.

6. On their departure from the territory of the U.S.S.R., the persons mentioned in Article 2 enjoy all the rights and privileges attached to their functions until the moment they leave the frontiers of the U S.S.R.

7. Goods and the luggage accompanying diplomatic representatives and the members of diplomatic missions of foreign states, as well as those addressed to these persons and to diplomatic missions, are exempt from customs duties and excises in accordance with special instructions to be issued by the People's Commissariat for Foreign Affairs, upon agreement with the People's Commissariat of Foreign and Domestic Commerce of the U.S.S.R. and the People's Commissariat for Finance of the U.S.S.R.

The rules concerning the transport of the said goods and luggage are fixed by Article 242 of the Customs Regulation of the U.S S.R (Compilation of Laws of the U.S.S R., 1926, No. 25, Article 159).[1]

8. Diplomatic couriers who carry diplomatic correspondence addressed to the diplomatic missions of foreign states on the territory of the U.S.S.R., or diplomatic correspondence addressed to the Ministry of Foreign Affairs of the respective state and to the diplomatic missions of their state in third countries, as well as diplomatic couriers of foreign states having diplomatic relations with the U.S.S.R., who carry diplomatic correspondence in transit through the territory of the U.S.S.R., enjoy personal inviolability. They may not be subjected to arrest or to administrative or judicial detention.

Diplomatic correspondence carried by the said diplomatic couriers may also not be seized or opened under any circumstances.

Competent organs of the U.S.S.R. and of the Federated Republics are required to lend them all the necessary aid to assure their free passage and the security of the correspondence carried by them.

The above-mentioned privileges are granted to diplomatic couriers only on the basis of reciprocity. The rules to be followed as regards the passage of diplomatic couriers of foreign states and of diplomatic correspondence carried by them, its weight, and the customs and other formalities to be observed during its transportation, are fixed by an

[1] Now Article 151, following a revision of the Customs Regulations: "The procedure for the transport of goods and luggage accompanying foreign, diplomatic, and consular representatives and their co-workers, or addressed to these persons or to the respective institutions, as well as the procedure for the passage by the customs institutions of foreign diplomatic couriers and the official articles and personal luggage which accompany them, shall be fixed by special laws and by rules published by the People's Commissariat of Foreign Commerce, after agreement with the People's Commissariat for Foreign Affairs and the Central Political Administration of the State."

instruction to be issued by the People's Commissariat for Foreign Affairs upon agreement with the People's Commissariat of Foreign and Domestic Commerce of the U.S.S.R. and the People's Commissariat of Finance of the U.S.S.R.

II

The Consular Institutions of Foreign States

9. Persons appointed by the respective governments in the capacity of consuls-general, consuls, vice-consuls, and consular agents, and accepted in this capacity by the Government of the U.S.S.R. represented by the People's Commissariat for Foreign Affairs, are recognized as consular representatives of foreign states in the territory of the U S.S.R.

Only citizens of the states which they represent may be consular representatives of foreign states.

Note: The acceptance of consular representatives takes place in each case by agreement with the Government of the Federated Republic concerned.

10 The appointment of consular representatives is certified through the presentation by the latter of consular patents to the People's Commissariat for Foreign Affairs. Their admission to the exercise of consular functions is effectuated by the People's Commissariat for Foreign Affairs by delivering to them the consular exequatur. The consular exequatur includes the indication of the consular district of the respective consular representative.

11. The consular representatives of foreign states enjoy, on the basis of reciprocity, the rights and privileges attached to their functions in conformity with the rules of international law.

In particular the consular representatives:

(*a*) Are exempt from all direct taxes collected for the central or local Government, as well as from personal contributions in kind or in money, with the exception of taxes relating to the exploitation of industrial or commercial enterprises, or to participation in such enterprises, and to the exercise of a personal profession.

(*b*) Enjoy the right to correspond without any hindrance with the diplomatic representative of their state in the territory of the U.S.S.R. by post and by telegram, clear or in cipher;

(*c*) Are not subject to the jurisdiction of the judicial institutions of the U.S.S.R. or of the Federated Republics because of offenses committed in the discharge of their office;

(*d*) May not be deprived of liberty otherwise than by virtue of a sentence of a court having legal force; preventive arrest is permissible only by virtue of a decision of the competent organ of judicial examination, and then only in the case where a judicial proceeding is opened against them for offenses falling within the competence of the Supreme Court of the U.S.S R., the Supreme Courts of the Federated Republics, the governmental tribunals (and the tribunals corresponding to them), or the military tribunals,

(*e*) Enjoy inviolability for their official correspondence kept on the official premises of the consular institutions separate from the private correspondence of the consular personnel. The said correspondence may neither be inspected, seized, nor placed under seal.

12. In all other cases, not provided for in Article 11, the situation of consular representatives, as well as of other persons belonging to the official consular personnel of foreign consular institutions, who are not citizens of the U.S.S R., is determined by the conventions between the U.S.S.R. and the foreign states, or by agreements between the People's Commissariat for Foreign Affairs and the diplomatic mission of the respective foreign state.

Appendix XII

AIR CODE OF 1932 OF THE UNION OF S.S.R.

(Sobr. Zak. i Rasp. S.S S.R., 1932, I, pp. 304ff.)

CHAPTER I

General Provisions

1. The air code is in force throughout the land and fluvial territory of the Union of S.S.R. and the territorial waters established by the laws of the Union of S.S.R., and within the air space of the Union of S.S.R.

By the air space of the Union of S.S.R. is understood the air space above the land and fluvial territory of the Union of S S.R., and above the territorial waters established by the laws of the Union of S.S.R.

2. To the Union of S.S R. belongs the complete and exclusive sovereignty over the air space of the Union of S S.R.

3. The air code of the Union of S.S.R. applies to civil aviation and civil aëronautics.

4. The General Administration of the Civil Air Fleet attached to the Council of Peoples' Commissaries of the Union of S.S.R. is charged with the planning, regulation, and inspection of civil aviation and civil aëronautics in the Union of S.S.R.

5. Civil aviation and civil aëronautics of the Union of S.S.R. have the same flag, in accordance with the description and the drawing attached hereto.

CHAPTER II

Civil Aircraft

[Arts. 6–16]

CHAPTER III

Crew of Civil Aircraft

[Arts. 17–24]

CHAPTER IV

Land Equipment for Flying

[Arts. 25–32]

CHAPTER V

WORKING CONDITIONS OF THOSE EMPLOYED IN CIVIL AVIATION AND CIVIL AERONAUTICS

[Arts. 33–34]

CHAPTER VI

FLYING

[Arts. 35–38]

CHAPTER VII

INTERNATIONAL FLYING

39. Every flight of a civil aircraft when crossing the state boundary of the Union of S.S R. is considered international flying.

International flying, besides [being regulated by] the general rules for flying in the air space of the Union of S S.R., is regulated by special rules as prescribed in this chapter

40. A civil aircraft listed in the Registry of the Union of S.S.R. may fly beyond the boundaries of the Union of S S.R only with the permission of the General Administration of the Civil Air Fleet.

This rule is not applicable to the ships engaged in the service of regular international air lines in conformity with the agreements between the Union of S.S.R. and foreign states, or the owners of these ships.

41. A foreign civil aircraft not listed in the Registry of the Union of S.S.R. may fly into the Union of S.S.R., through the air space of the Union of S.S.R., and beyond the Union of S.S.R. [*i.e.*, pass through it] only with the permission of the General Administration of the Civil Air Fleet.

The permit indicates:

(*a*) the air "gates" through which the ship must cross the state [national] boundary of the Union of S.S.R.;

(*b*) the route which the ship must follow, as well as the places where the ship must, or may, make a landing.

42. The foreign civil aircraft not listed in the Registry of the Union of S.S.R. enjoy the same technical services as the civil aircraft listed in the Registry of the Union of S.S.R.

43. When a civil aircraft, either due to *force majeure* or some other reason, violates the rules relative to crossing the state [national] boundaries of the Union S.S.R., and crosses these boundaries outside the stipulated air "gates," or is found outside the prescribed air routes,

it must, immediately upon the realization of this fact or upon the receipt of a landing signal, send a signal of distress, come down, and land on the nearest suitable place.

A ship which has landed under the aforementioned conditions may continue its flight only with the permission of the respective local organs of the General Administration of the Civil Air Fleet.

In case the ship does not obey the signal for landing, it may be brought down by force upon a second signal.

44. All civil aircraft in international flying, in respect of customs operations, are subject to the Customs Code of the Union of S.S.R. and to the regulations supplementary thereto

45 Persons arriving in the Union of S S.R or leaving the Union of S.S R. in an aircraft are subject to the general rules on entry into, departure from, and transit through the Union of S.S.R.

46. The customs and passport admission and clearance of the civil aircraft [engaged] in international flying takes place at the air ports, aërodromes, landing fields, and points which are determined by the People's Commissariat for Foreign Trade, with the consent of the General Administration of the Civil Air Fleet, and of the United State Political Administration [*OGPU*].

47. When a civil aircraft [engaged] in international flying meets with an accident or makes a forced landing before reaching the landing place prescribed for the customs and passport inspections of ships engaged in international flying, and where there is no customs official, the local organs of the [state] authority must take all necessary measures to protect the freight, luggage, and other goods found in the ship, and to insure the possibility of carrying out the passport formalities.

The same rule is applicable in cases where the ship [engaged] in international flying meets with an accident or makes a forced landing in the Union of S.S.R. after the customs and passport formalities have taken place at the time of the clearance of the ship.

The People's Commissariat for Foreign Trade of the Union of S.S.R. and the United State Political Administration [*OGPU*], with the consent of the General Administration of the Civil Air Fleet, [are charged with the] promulgation of rules supplementary to the present article.

48. The documents relative to civil aircraft, not listed in the Registry of the Union of S.S.R., and to the crew, passengers, and luggage of these ships, are valid in the Union of S.S.R. on the basis of conformity with the agreements of the Union of S.S.R. in force with foreign states.

49. Foreign civil aircraft, not listed in the Registry of the Union of S.S.R., may be examined for the purpose of verifying their technical adequacy in cases where there is no agreement between the Union of S.S.R. and the respective state to the effect that the documents of that state in verification of the technical adequacy of the aircraft for flying are to be recognized as adequate in the Union of S.S.R.

50. International transportation of air mail is carried out on the basis of international agreements of the Union of S.S.R. on mail.

51. The General Administration of the Civil Air Fleet may make exceptions to the rules of the present code for foreign civil aircraft which are making individual flights of a special nature.

52. Foreign civil aircraft, their crews, and passengers, while flying in the air space of the Union of S S.R., are subject to the laws and regulations in force in the Union of the S.S.R.

CHAPTER VIII

Material Responsibility of the Air Carrier and Manner of Settlement of Disputes

[Arts. 53–63]

CHAPTER IX

Competence of the General Administration of the Civil Air Fleet to Issue Rules and Regulations

[Arts. 64–68]

Appendix XIII

DECREE OF PEACE, UNANIMOUSLY ADOPTED AT A MEETING OF THE ALL-RUSSIAN CONVENTION OF SOVIETS OF WORKERS', SOLDIERS' AND PEASANTS' DEPUTIES ON NOVEMBER 8, 1917

(*Sborn. Dekretov 1917–1918 gg*, pp. 1–3)

The Workers' and Peasants' Government, created by the revolution of October 24th and 25th (November 6th and 7th), and based on the Soviet of Workers', Soldiers', and Peasants' Deputies, proposes that all warring peoples and their Governments begin immediately negotiations for a just and democratic peace

An overwhelming majority of the exhausted, wearied, and war-tortured workers and the laboring classes of all the warring countries are longing for a just and democratic peace—a peace which in the most definite and insistent manner was demanded by Russian workers and peasants after the overthrow of the Tsar's monarchy. As such a peace the Government considers an immediate peace, without annexations (*i.e.*, without seizure of foreign territory, without forcible annexation of foreign nationalities), and without indemnities.

The Government of Russia proposes to all warring peoples to conclude such a peace immediately. It expresses its readiness to take, without the slightest delay, all the decisive steps, until the final confirmation of all terms of such a peace be made by the plenipotentiary conventions of the representatives of all countries and all nations.

In accordance with the legal consciousness of democracy in general, and of laboring classes in particular, annexation or seizure of foreign territory is understood by the Soviet Government as any addition to a large or powerful state of a small or weak nationality, without the definitely, clearly, and voluntarily expressed consent and desire of this nationality, regardless of when this forcible addition took place, regardless also of how developed or how backward is the nation forcibly attached or forcibly retained within the frontiers of a given state, and, finally, regardless of the fact whether this nation is located in Europe or in distant lands beyond the seas.

As to any nation whatsoever, retained within the boundaries of a certain state by force, if it is not given the right of free voting in accordance with its desire, regardless of whether such desire has been expressed in the press, in people's assemblies, in decisions of political parties, or rebellions and insurrections against national oppression,—such plebiscite to take place under the condition of the complete removal of the armies of the annexing or the more powerful nation,—and if the weaker nation is not given the opportunity to decide the question of the form of its national existence, then its retention is annexation, that is, seizure—violence.

The Government considers it the greatest crime against humanity to continue the war for the sake of dividing among the powerful and rich states the weaker nations seized by them, and the Government solemnly states its readiness to sign immediately terms of peace which will end this war, on the basis of the above-stated conditions, equally just for all nationalities without exception. At the same time the Government announces that it does not consider the above-stated conditions of peace as in the nature of an ultimatum, that is, it is ready to consider any other terms of peace, insisting, however, that such be proposed as soon as possible by any one of the warring countries and on condition of the most definite clarity and absolute exclusion of any ambiguousness, or any secrecy when proposing the terms of peace.

The Government abolishes secret diplomacy and expresses its firm intention to carry on all negotiations openly before the people, and is immediately beginning to publish in full [the text of] the secret treaties concluded or confirmed by the Government of landowners and capitalists from February to November 7th, 1917. The Government abrogates absolutely and immediately all the provisions of these secret treaties inasmuch as they were intended, in the majority of cases, for the purpose of securing profits and privileges for Russian landowners and capitalists and retaining or increasing the annexations by the Great-Russians.

While addressing the proposals to the Governments and peoples of all countries to start immediately open negotiations for the conclusion of peace, the Government expresses its readiness to carry on these negotiations by written communications, by telegraph, as well as by parleys of the representatives of various countries, or at a conference of such representatives. To facilitate such negotiations the Government will appoint plenipotentiary representatives in neutral countries.

The Government proposes to all the Governments and peoples of all the warring countries to conclude an armistice immediately, for its part it considers it desirable that this armistice should be concluded for a period of not less than three months—that is, a period during which it would be fully possible to terminate the negotiations for peace with the participation of the representatives of all peoples and nationalities involved in the war or compelled to participate in it, as well as to call the plenipotentiary conventions of people's representatives of all countries for the final ratification of the terms of peace.

While addressing this proposal of peace to the Governments and peoples of all the warring countries, the Provisional Workers' and Peasants' Government of Russia appeals also in particular to the class-conscious workers of the three most forward nations of the world and the largest states participating in the present war—England, France, and Germany. The workers of these countries have been of the greatest service to the cause of progress and socialism. We have the great example of the Chartist movement in England, several revolutions which were of universal historic importance accomplished by the French proletariat, and finally the heroic struggle against the exclusive law in Germany, and the prolonged, stubborn, disciplined work—a work setting an example for the workers of the whole world—of creating mass proletarian organizations in Germany. All these examples of proletarian heroism and historic creative work serve as a guarantee that the workers of the above-mentioned countries understand the duties which devolve upon them now in the cause of the liberation of humanity from the horrors of war and its consequences, a cause which these workers by their resolute and energetic activity will help us to bring to a successful end—the cause of peace, and, together with this, the cause of the liberation of the laboring and exploited.

Appendix XIV

AGREEMENT BETWEEN THE R.S.F.S.R. AND ROUMANIA SIGNED AT YASSY, MARCH 5, 1918, AND AT ODESSA, MARCH 9, 1918.

(*Sborn. Deistv. Dogov.*, I–II, 1928, pp. 113–114)

1. Roumania undertakes to withdraw from Bessarabia within two months. She will also evacuate immediately the strategic point Zhebrijany, situated at the head of the bay near the mouth of the Danube. All localities evacuated by Roumanian troops shall be immediately occupied by Russian troops. At the end of two months there are to remain in Roumania a Roumanian force of 10,000 men to protect Roumanian warehouses and railroads.

2. Immediately after the signing of this treaty the protection of Bessarabia shall be transferred to the local city and village militia. The Roumanian military authorities renounce hereby the right of arrest, and, in general, the right of judicial and administrative functions, which belong exclusively to the local elective authorities.

3. All Roumanian citizens arrested in Russia shall be exchanged for the Russian revolutionary officers and soldiers who are under arrest in Roumania.

4. Roumania undertakes not to enter into any kind of unfriendly military or other actions against the All-Russian Federation of the Soviet Republics of Workers and Peasants and not to support such actions if undertaken by other states.

5. Russia undertakes to place at the disposal of Roumania all the excess of grain found in Bessarabia after the needs of the local population and of the Russian military units have been met. Besides, Roumania shall have the right to purchase in all other parts of Russia the products which are necessary for Roumania and which are not to be found in Bessarabia (fish, fats, sugar, tea, etc.).

6. Russia shall return to Roumania all food storage warehouses established by the Allies, and provided for the use of the Roumanian population.

7. In the event of a forced retreat by the Roumanian army from Roumanian territory, shelter and food will be found on Russian territory.

8. In case of parallel actions against the central states and their allies, a contact shall be established between the Supreme Russian military authority of the Russian Soviet Armies and that of the Roumanian Armies.

9. To settle any conflict that may arise between Roumania and the Russian Federation of the Soviet Republics of Workers and Peasants, there shall be formed international commissions at Odessa, Kiev, Moscow, Petrograd, Yassy and Galatz, composed of representatives of Russia, Roumania, England, France, and the United States of America.

Odessa, March 9, 1918. Yassy, March 5, 1918.

Signed:

for Russia

Chairman for the Supreme Autonomous Collegium of the Council of Peoples' Commissaries for Russo-Roumanian Affairs
RAKOVSKY

Commissar for Foreign Affairs of the Odessa Soviet Republic
BRASHOVAN

Chairman of the Rumcherod
YUDOVSKY

Chairman of the Executive Committee of the Soviets of Deputies in Odessa
VORONSKY

Commanding General of the Soviet Armies in the South
MOURAVIEFF

for Roumania

Chairman of the Council of Ministers and Minister for Foreign Affairs
AVARESCU

Appendix XV

PROTEST OF THE R.S.F.S.R. GOVERNMENT AGAINST ITS EXCLUSION FROM PARTICIPATION IN THE WASHINGTON CONFERENCE. TELEGRAM FROM CHICHERIN, PEOPLE'S COMMISSARY FOR FOREIGN AFFAIRS, TO THE GOVERNMENTS OF GREAT BRITAIN, FRANCE, THE UNITED STATES OF AMERICA, CHINA, AND JAPAN OF JULY 19, 1921

(*Sovetskii Soiuz v Bor'be za Mir*, pp. 131–132)

The Russian Government learns through the foreign press that a conference of Pacific powers, or powers having special interests on the shores of the Pacific, will shortly be held in Washington. The Government of the R.S.F.S.R., as a Pacific power, cannot conceal its astonishment in learning of the existence of an intention to call such a conference without its participation. Although the Russian Republic and the Far-Eastern Democratic Republic have territories on the shores of the Pacific Ocean, the powers that decided to meet in Washington did not consider it necessary to invite the Russian or Far-Eastern Republic to this conference. This fact, extremely serious as it is, is rendered still more so by the fact that, during the exchange of opinion on this question, as reported in the press, the right of Russia to participate in the conference, as a power with subjects for discussion connected with the Pacific, was fully admitted, but the above-mentioned powers declared that they would themselves undertake to watch out for the interests of Russia without the latter's representation, and that they reserved to themselves the right subsequently to invite a new Russian Government which should replace the present one to submit to the decisions and agreements to be reached by themselves.

The Russian Government can by no means agree that other powers should undertake the right to speak for it, the more that this ostracism is intended to apply only to the Workers' and Peasants' Governments, and that another counter-revolutionary Government which might re-

place it would not be thus ostracized. The position assumed by the aforementioned powers can only be interpreted as obviously favoring Russian counter-revolution, and as yet another demonstration of the system of intervention.

The Russian Government protests against its exclusion from a conference which touches it directly, and protests equally against any intention of any power whatsoever to undertake decisions touching the shores of the Pacific without the authority of Russia.

The Russian Government solemnly declares that it will not recognize any decision passed by the above-mentioned conference, inasmuch as it is being called without the participation of Russia Whatever may be the decisions of this conference, the Russia Government, not participating in it, maintains for that reason complete freedom of action in all questions there discussed, and will carry out this freedom of action in all circumstances and by all means which it considers proper. It will thus be able to upset any plans whose realization may be prepared by this conference which may be hostile towards the Soviet Government, or not in accordance with its point of view. The Soviet Government considers that it has grounds for the assertion that the decisions of this conference will be ineffective and devoid of significance, in view of the absence from and non-participation in it of one of the principal interested parties.

At the same time the Russian Government considers itself obliged to declare that it considers this action as a hostile act directed against itself and against the Russian workers and peasants whose will it represents, and any privilege which may be shown by the above-mentioned Governments to any counter-revolutionary Governments replacing the Soviet Government will be regarded by it as hostile.

The Government of Russia has also learned that a question of the most general interest—that of disarmament, or at least of naval disarmament—will be discussed at the coming conference. The Russian Government can only welcome any attempts at disarmament or reduction of the military expenditure under which the toilers in all countries are groaning. It considers as indispensable, however, that preliminary guarantees be given that this disarmament will actually be effected, taking into consideration that the possibility of such guarantees at the present time seems highly doubtful. Nevertheless, the very idea of disarmament can only seem to the Soviet Government worthy of approval. This disarmament, in its opinion, is one of the results towards which the extension of those social changes which have occurred in Russia is bound to lead. The absence, however, of the Rus-

sian Government during international discussion of this subject will merely have the effect of forcing Russia to ignore the decisions of the conference, in which the Russian Government, not being represented, will have no part. The policy tending to leave Russia outside the collective decisions of various powers on questions concerning it, not only cannot assist the settlement of the conflicts at present disturbing the world, but can only render them more acute and more complicated.

Appendix XVI

[EXTRACT] FROM MEMORANDUM OF RUSSIAN DELEGATION TO GENOA CONFERENCE APRIL 20, 1922

(*Sovetskii Soiuz v Bor'be za Mir*, pp. 140–142)

The Soviet Government and Its Obligations

The delegation declares that the Soviet Government, arising out of the great revolution has always fulfilled and intends always to fulfill all obligations undertaken by itself, and that, therefore, all its public and legal guarantees are no less solid than those of any other sovereign power. . . .

If the Soviet Government has refused to undertake the obligations of former Governments, or the satisfaction of the claims of persons bearing losses owing to measures of internal policy, such as the nationalization of enterprises, the municipalization of houses, the requisition or confiscation of property, this is not because it is incapable of adhering to its obligations, or disinclined to do so, but because of matters of principle and political necessity.

The revolution of 1917 utterly swept away all old economic, social, and political relations, and substituted a new society for the old, transferring State power in Russia to a new social class by the sovereignty of a revolting people; in so doing it broke the continuity of civil obligations which were an integral part of economic relations in the society which has disappeared, and which, together with these relations, also disappeared. This revolution was a vast elemental upheaval such as the world undergoes only in exceptional moments, and that it was in the nature of an irresistible force cannot be disputed by any impartial thinker. The views of authorities on international law who deny to Governments whose citizens may suffer in moments of spontaneous movements and uprisings the right to demand compensation under law, and still more to use force for the satisfaction of such demands, apply to Russia more than to any other country.

The Russian Delegation, while unconditionally denying any responsibility whatever for the destruction of foreign property arising out

of the economic crisis caused by the war and its consequences, or ensuing on the abandonment of property by its owners on going abroad, and also for destruction of foreign property during the Allied intervention and the civil war supported by the Allied Governments, would draw the attention of the conference to the fact that neither the systematic activities of the Soviet Government itself, such as the nationalization of industrial equipment, nor the requisition of property belonging to foreigners, imposes upon the Soviet Government the obligation to compensate persons suffering loss. The Allied Governments, and the Governments of the neutral countries under their influence, greeted the very fact of the Soviet Revolution with hostility, and had refused to enter into official relations with the new Russian Government even before it took the first measures for nationalization. Not the slightest attempt was made by them to enter into an agreement with the Soviet Government for the protection of the interests of their fellow-citizens and the amicable liquidation of their property rights in Russia, despite the fact that in all cases of individual representatives of foreign Governments, entering into relations with the Soviet Government for the protection of the interests of their fellow-citizens, the requisition of property was, whenever possible, rescinded, and many losses compensated. . . . Foreign property was abandoned to its fate, which threatened serious danger for the industry of the country, in view of the fact that many foreign enterprises were of the greatest importance for the general national economy of Russia.

Appendix XVII

REPLY OF THE GOVERNMENT OF THE U.S.S.R. TO THE PROPOSAL TO ADHERE TO THE KELLOGG PACT

(From People's Commissariat for Foreign Affairs)

(*Sovetskii Soiuz v Bor'be za Mir*, pp. 324–329)

On August 27th you were kind enough, at the instigation of your Government, to draw my attention officially to the fact that on that day the Governments of the German Republic, the United States of America, Belgium, France, Great Britain and its dominions, Italy, Japan, Poland, and Czechoslovakia had signed a multilateral pact, under which they bound themselves not to resort in their mutual relations to war as an instrument of national policy, and to settle any differences arising between them exclusively by peaceful means. Upon handing me a copy of the aforenamed Pact, and giving me a brief summary of its history, you were kind enough, Mr. Ambassador, to inform me: (*a*) that the limitation of the number of original participants in the Pact corresponded, in the opinion of the Government of the United States of America, merely to practical considerations, with a view to facilitating the speediest possible realization of the Pact, but that nevertheless it had always been intended, when finally formulated, to guarantee the immediate coöperation of all nations on the same conditions and with the same advantages as enjoyed by the original participants to the Pact; (*b*) that, in accordance with this, the Government of the United States was empowered to accept declarations from all States wishing to subscribe to the Pact; (*c*) that the representatives of the Government of the United States in all foreign States excepting those whose representatives had already signed the Pact had received instructions to communicate to the Governments to which they are accredited the text of the Pact signed in Paris; (*d*) that the United States Government declares its readiness to receive now any declarations of adherence from these States; (*e*) that the Government of the French Republic has accepted the mission of communicating to the U.S.S R. Government, through your mediation, Mr. Ambassador, the

text of the above-mentioned Pact and of asking if it consented to subscribe to the Pact, and, (*f*) that in this case you, Mr. Ambassador, are empowered to accept the declaration of adherence for transmission to Washington.

I have the honor, Mr. Ambassador, to request you to transmit the answer of the Soviet Government to your Government as hereunder given, asking them to send it to the Government of the United States of America:

1. The Soviet Government, whose foreign policy since the very first days of its existence has been founded upon the preservation and guarantee of general peace, has always and everywhere acted as the energetic supporter of peace and met halfway every step in that direction. At the same time the Soviet Government has always considered and still considers the carrying out of a plan for general and complete disarmament as the only real means of averting armed conflicts, since in an atmosphere of general feverish armament any rivalry between powers inevitably leads to war, and the more perfect the system of armament, the more destructive such war will be. A fully worked-out draft for complete disarmament was proposed by the Soviet Delegation to the Preparatory Disarmament Commission under the League of Nations, but unfortunately this found no support from the majority at the aforementioned Commission, including representatives from those same powers who have been the original participators in subscribing to the Paris pact. Our draft was rejected despite the fact that its acceptance and realization would have signified a true guarantee of peace.

2. Not desiring to let slip a single opportunity for facilitating the diminution of the heavy burden of armaments on the toiling masses, the Soviet Government, after the rejection of its proposal for full disarmament, not only did not refuse to discuss the question of the partial reduction of armaments, but, through its delegation at the Preparatory Disarmament Commission, came forward itself with a fully worked-out draft for partial, but nevertheless very appreciable, disarmament. The Soviet Government is, however, unfortunately forced to record that this draft also failed to meet with the sympathy of the Preparatory Disarmament Commission, which fact once more demonstrates the utter powerlessness of the League of Nations in the matter of disarmament—the most solid guarantee of peace and the most powerful means of destroying war, the proposals of the Soviets having been openly objected to by almost all the States that have been the first to subscribe to a pact for the prohibition of war.

3. As well as systematically championing the cause of peace, the Soviet Government, for the realization of its peace policy, also appealed, long before the idea arose for the signing of the Paris Pact, to other powers, with a proposal to renounce, by means of mutual pacts, not only such wars as are provided for under the Paris Pact, but all attacks on each other and all armed conflicts whatsoever. Certain States, such as Germany, Turkey, Afghanistan, Persia, and Lithuania, accepted this proposal and concluded corresponding pacts with the Soviet Government; others passed it over in silence and avoided giving a reply; while yet others rejected it on the strange ground that unconditional renunciation from attack was not in accordance with their obligations towards the League of Nations. This, by the way, did not prevent these same powers from subscribing to the Paris Pact, despite the fact that there was no mention whatsoever in the text of the Pact of the inviolability of these obligations.

4. The above facts bear incontrovertible testimony to the fact that the idea of the removal of war and armed conflicts from international politics was the fundamental ruling idea of Soviet foreign policy. Despite this the initiators of the Paris Pact did not consider it necessary to invite the Soviet Government to take part in the negotiations preceding this Pact, and the working out of its steps. Moreover, powers really interested in the guarantee of peace, inasmuch as they have been the objects of attack themselves (Turkey, Afghanistan), or are so at the present time (the republic of the great Chinese nation), have also not been invited to participate in the Pact. The invitation transmitted through the French Government to join the Pact does not contain conditions which would make it possible for the Soviet Government to have any influence on the text of the document signed in Paris. The Soviet Government, however, assumes the position that it cannot be deprived of the right which the Governments signing the Pact have realized or could realize, and, taking up its stand on that right, feels bound to make certain preliminary remarks with regard to its attitude to the Pact itself.

5. The Soviet Government cannot, in the first place, refrain from expressing its profound regret at the omission from the Paris Pact of any obligation whatever in the sphere of disarmament. The Soviet Delegation has already had the opportunity, before the Preparatory Disarmament Commission, of declaring that only the combination of a pact prohibiting war with the execution of full and general disarmament would be capable of a real effect in the guaranteeing of general peace and that, on the contrary, an international treaty "prohibiting war"

and not accompanied by even such an elementary guarantee as the limitation of perpetually increasing armaments, must remain a dead letter, without any great significance. The recent public utterances of certain participators in the Paris Pact, on the inevitability of further armaments even after the conclusion of the Pact, is confirmation of this. The formation during this time of new international-political groupings, especially in connection with the question of naval armaments, has still more emphasized the situation. The present state of affairs therefore makes the taking of decisive measures in the sphere of disarmament more essential than ever.

6. Turning to the text of the Pact, the Soviet Government considers it essential to point out the insufficiently clear definition in the first clause of the formulation itself of the prohibition of war, which remains open to various and arbitrary interpretations. The Soviet Government for its part considers that any international war, both as an instrument of so-called "national policy" and as serving other ends (such as the suppression of emancipatory national movements, etc.) should be prohibited. In the opinion of the Soviet Government not only wars in the formal legal sense of the word (*i.e.*, assuming "declaration of war," etc.), but also military activities, such as intervention, blockade, military occupation of foreign territory or ports, etc., should be prohibited. The history of the last few years knows not a few of such kinds of military activity, carrying with them terrible disaster for the people. The Soviet Republics have themselves been the objects of such attacks, and the four hundred million people of China are at present suffering from them. Moreover, such military activities are often transformed into great wars, which cannot then be prevented. And yet these—the most important of all questions from the point of view of the preservation of peace—are passed over in silence in the Pact. Furthermore, likewise in the first clause, the Pact speaks of the necessity for solving all international controversies and conflicts exclusively by peaceful means. The Soviet Government in this connection considers that to the list of non-peaceful means forbidden by the Pact, should be added also the refusal to revive normal peaceful relations, or the destruction of such relations between nations, since such acts, implying the removal of peaceful means for reconciling disputes, injure relations and facilitate the creation of an atmosphere favorable to the arising of war.

7. Among the reservations made during diplomatic correspondence between the original participators in the Pact, the Soviet Government attributes special importance to that of the British Government, in

clause 10 of its note of May 19th last By this reservation the British Government reserves to itself freedom of action in regard to various territories not even specially mentioned. If reference is intended to territory forming a part of the British Empire or its dominions, these are already included in the Pact, and the case of attack on them provided for, so that the reservations of the British Government in their regard would seem to be, to say the least, superfluous. If reference is intended to other territory, the participants in the Pact are entitled to know where the freedom of action of the British Empire begins and where it ends. But the British Government does not only reserve to itself freedom of action in case of military attack on these territories, but even with regard to any "unfriendly" act or so-called "interference," while it apparently reserves to itself the right of arbitrary definition as to what constitutes an "unfriendly" act, or "interference" justifying open military action on the part of the British Empire.

To acknowledge such rights for the British Empire would be to justify war and might serve as an infectious example for other participants of the Pact also, who would be entitled by their equal rights to adopt similar privileges in relations to other territories, so that in the end there would perhaps be no spot on the globe to which the Pact would apply. Indeed, the reservations of the British Empire imply an invitation to another participant of the Pact to withdraw from the latter's field of influence in other territories. The Soviet Government can only regard these reservations as an attempt to take advantage of the Pact itself as a weapon of imperialist policy The above-mentioned Note of the British Government, however, was not communicated to the Soviet Government either as an integral or a supplementary part of the Pact, and it cannot therefore be considered as binding on the Soviet Government, any more than other reservations contained in the diplomatic correspondence with regard to the Pact between its original participants will be binding for it. The Soviet Government is likewise unable to agree with any other reservations capable of serving as a justification for war, especially those made in the correspondence above referred to for the exemption from the operation of the Pact of decisions based on the Covenant of the League of Nations or the Locarno Agreements.

8. To sum up, I must point out the lack in the Pact of obligations for disarmament, the only real element that can guarantee peace, the inadequacy and indefiniteness of the formulation of the prohibition of war itself, and the existence of a series of reservations aimed at re-

moving in advance even the obligations with regard to peace that do exist in the Pact. Nevertheless, inasmuch as the Paris Pact imposes on the Powers some external obligations before public opinion and gives the Soviet Government another opportunity to bring before all participators in the Pact the most important question for peace—the question of disarmament, the solution of which is the only guarantee of the aversion of war—the Soviet Government declares its consent to subscribe to the Paris Pact.

In accordance with the above I shall have the honor to transmit to you, Mr. Ambassador, the corresponding declaration of the Soviet Government's adherence to the Kellogg Pact as soon as the necessary formalities have been completed.

Accept, etc.,

LITVINOV,
Acting People's Commissary for Foreign Affairs

APPENDIX XVIII

FUNDAMENTAL PRINCIPLES OF THE SOVIET PROJECT OF A CODE OF RULES ON WAR PRISONERS

(From Korovin, E. Sovremennoe Mezhdunarodnoe Publichnoe Pravo, p. 155)

THE status of war prisoners must be determined in detail by international rules, the execution of which must be guaranteed by the actual responsibility of the officials in charge of the war prisoners.

Lists with the names of those taken war prisoners must be communicated without delay to the government of their country.

All medical-sanitary regulations of the capturing country in force for its own men must be made applicable also to sick and wounded prisoners from the time of being taken into captivity.

War prisoners retain full civil and political capacity and have the right to exercise it in so far as this does not conflict with military considerations of safety.

A common régime must be applied to all war prisoners. Racial, national, and religious differences cannot serve as a reason for changing the existing régime.

Living conditions must correspond to those established for the men of the capturing country.

Food rations received by each war prisoner must not be less than those received by the civil population.

War prisoners must be given the right to organize, by way of free elections, their own offices for communication with governmental, social, and international bodies dealing with prisoners of war, as well as for cultural, educational, or economic purposes.

Using war prisoners for labor must be in conformity with the regulations relative to the protection of labor; in general all regulations, both of local and of international labor legislation, must be applied to war prisoners.

Compensation for the labor of the war prisoners must correspond to the pay prevailing in the local market.

All measures must be taken that war prisoners may freely receive help from their own or neutral countries.

Repatriation of war prisoners after the signature of the Peace [Treaty] must take place immediately, irrespective of the ratio between the number of war prisoners of the belligerent countries.

The cost of the maintenance of war prisoners must be paid mutually, in which connection consideration must be given to the equivalent of the labor of war prisoners, both in government and private undertakings, in so far as this equivalent has not been covered by the payments, etc.

Appendix XIX

TREATY OF GUARANTY AND NEUTRALITY BETWEEN THE U.S.S.R. AND PERSIA CONCLUDED AT MOSCOW ON OCTOBER 1, 1927

(*Sborn. Deistv. Dogov.*, IV, 1928, pp. 23–25)

Clause 1. The basic mutual relations between Persia and the U S.S.R. are to continue to be governed by the Treaty of February 26, 1921, all the clauses and decisions of which are to remain in force, and the applicability of which is to be extended to the whole territory of the U.S.S.R.

Clause 2. Each of the contracting parties undertakes to refrain from all aggressive action against the other, and not to introduce its military forces into the territory of the other contracting party.

In case either of the contracting parties become the object of attack by one or more other powers, the other contracting party undertakes to observe neutrality throughout the duration of the conflict, while the contracting party undergoing attack shall not, for its part, violate this neutrality, whatever stragetical, tactical, or political considerations or advantages such infringement might represent.

Clause 3. Each of the contracting parties undertakes not to enter into any formal or actual political alliances or agreements directed against the safety on land or sea of the other contracting party, or against its integrity, inviolability or sovereignty.

Moreover, both contracting parties undertake to refrain from taking part in economic boycotts or blockades organized by other powers against either of the contracting parties.

Clause 4. In view of the obligations mentioned in Clauses 4 and 5 of the Treaty of February 26, 1921, each of the contracting parties, having no intention to interfere with the internal affairs of the other party, or to carry on propaganda or a struggle against the Government of the other party, will strictly prohibit its officials from taking such action on the territory of the other contracting party.

If the citizens of either contracting party concern themselves on the

territory of the other contracting party with propaganda or campaign prohibited by the authorities of such contracting party, the Government of this territory will have the right to put an end to the activities of such citizens and apply legal punishment to them.

Equally, in view of the above-mentioned clauses, both parties undertake not to support and not to allow on their respective territories (1) organizations or groups of any designation whatever, aiming at campaign against the Government of the other contracting party whether by means of violence, uprisings, or acts of terrorism; (2) organizations or groups usurping the rôle of Government within the confines of the other contracting party or in any part of its territory, or aiming at a campaign by the above-mentioned means against the other contracting party, the infringement of its peace or safety, or an attempt on its territorial integrity.

Maintaining their stand on the above principles, both contracting parties bind themselves equally to forbid the recruiting or transportation to their respective territories of armed forces, armaments, munitions, or any sort of military material, intended for the above-mentioned organizations.

Clause 5. Both contracting parties undertake to regulate all kinds of controversies that may arise between them which cannot be settled through the usual diplomatic channels, by peaceful means, suitable to the situation.

Clause 6. Outside the limits of the obligations undertaken by both contracting parties, under this treaty, both parties reserve to themselves entire freedom of action in their international relations.

Clause 7. This treaty is concluded for a term of three years. At the expiration of the original term of the treaty it will be considered as automatically prolonged each time for one year, unless either of the contracting parties gives warning of its desire to bring it to an end.

APPENDIX XX

[EXTRACT] FROM DECLARATION BY THE U.S.S.R. DELEGATION AT THE MEETING OF THE PREPARATORY DISARMAMENT COMMISSION OF NOVEMBER 30, 1927

(*Sovetskii Soius v Bor'be za Mir*, pp. 191–192)

DESPITE the skeptical attitude of the Soviet Government toward the labors of the League, it accepted the invitation of December 12, 1925, to attend the coming Disarmament Conference, and only the Soviet-Swiss conflict, evoked by the assassination of Vorovsky and the subsequent acquittal of the assassin by the Swiss court, has prevented the Soviet Government from attending previous sessions of the Preparatory Commission.

In now sending a delegation to the fourth session of the Preparatory Commission for the Disarmament Conference, the Government has authorized it to present a scheme for general and complete disarmament. The Soviet delegation is authorized by its Government to propose the complete abolition of all land, marine and air forces The Soviet Government suggests the following measures for the realization of this proposal:—

a. The dissolution of all land, sea, and air forces, and the refusal to countenance their existence in any concealed form whatsoever.

b. The destruction of all weapons, military supplies, means of chemical warfare, and all other forms of armament and means of destruction in the possession of troops, and military and general stores.

c. The scrapping of all warships and military air vessels.

d. The discontinuance of the calling up of citizens for military training, either in armies or public bodies.

e. Legislation for the abolition of military service, whether compulsory, voluntary, or recruited.

f. Legislation prohibiting the calling up of trained reserves.

g. The destruction of fortresses and naval and air bases.

h. The scrapping of military plants, factories, and war industry plants in general industrial works.

i. The discontinuance of assigning funds for military purposes, both in State budgets and those of public bodies.

j. The abolition of military, naval, and air Ministries, the dissolution of general staffs and all kinds of military administrations, departments, and institutions.

k. Legislative prohibition of military propaganda, military training of the population, and military education both by State and public bodies.

l. Legislative prohibition of the patenting of all kinds of armaments and means of destruction, with a view to the removal of the incentive to the invention of the same.

m. Legislation making the infringment of any of the above stipulations a grave crime against the State.

n. The rescinding or amendment of all legislative Acts, both of national and international scope, infringing the above stipulations.

The Soviet delegation is empowered to propose the fulfillment of the above programme of complete disarmament as soon as the pertinent Convention comes into force, in order that all necessary measures for the destruction of military stores may be completed in a year's time. The Soviet Government considers that the above scheme for the execution of complete disarmament is the simplest and the most conducive to peace.

Appendix XXI

DECREE OF THE COUNCIL OF PEOPLES' COMMISSARIES OF OCTOBER 20, 1930, REGARDING ECONOMIC RELATIONS WITH COUNTRIES APPLYING A SPECIAL RÉGIME OF RESTRICTIONS TO TRADE WITH THE U.S.S.R.

(*Sobr. Zak. i Rasp. S.S.S.R.*, 1930, I, p 1031)

The Council of Peoples' Commissaries of the U.S.S.R. has decreed:

To instruct the People's Commissary for Foreign and Domestic Trade of the U.S.S.R. to take the following measures in regard to countries which established for Trade with the U S.S.R. a special régime of restrictions, which, not being extended to other countries, by applying special measures of a legislative and administrative character, hinder the normal importation of Soviet goods:

(1) to stop absolutely or to reduce to a minimum orders and purchases in those countries;

(2) to stop the chartering of merchant vessels of those countries;

(3) to establish, jointly with the People's Commissary for Communications and Transit, special restrictive rules for the Transit of goods produced in or shipped from those countries;

(4) to take measures, jointly with the People's Commissary for Communications and Transit to stop completely or to reduce to a minimum the use of the seaports, transit routes, and bases of these countries for reëxport operations of the U.S.S.R.

APPENDIX XXII

PROTOCOL ON THE LEGAL STATUS OF THE TRADE REPRESENTATION OF THE UNION OF S.S.R. IN LITHUANIA, SIGNED AT KAUNAS ON AUGUST 29, 1931

(*Sobr. Zak. i Rasp. S.S.S.R.*, 1932, II, pp. 158–59)

IN conformity with the negotiations which took place in regard to the legal status of the Trade Representation of the Union of S.S.R. in Lithunania, the undersigned have agreed on the following:

1. For the practical exercise of the monopoly of the Foreign Trade of the Union of Socialist Soviet Republics, which, according to the laws of the Union of Socialist Soviet Republics, is vested in the Government of the Union, there shall be established a Trade Representation within the Representation Plenipotentiary [Diplomatic Mission] of the Union of Socialist Soviet Republics in Lithuania, located in the City of Kaunas.

2. The Trade Representation of the Union of Socialist Soviet Republics is charged:

(*a*) with promoting the development of trade and economic relations between the Union and Lithuania, as well as with representing the interests of the Union in the field of foreign trade;

(*b*) with regulating in the name of the Union the foreign trade with Lithuania;

(*c*) with engaging in the name of the Union in foreign trade with Lithuania.

3. The Trade Representative and his deputy are members of the diplomatic personnel of the Diplomatic Mission of the Union of Socialist Soviet Republics and shall enjoy all rights and privileges accorded to the members of diplomatic missions. The offices of the Trade Representation in Kaunas shall enjoy extraterritoriality. The Trade Representation shall have the right of communication by code.

4. The employees of the Trade Representation and its branches—

citizens of the Union of Socialist Soviet Republics—appointed and sent to Lithuania by the People's Commissariat for Foreign Trade of the Union shall be exempt in Lithuania from income tax on the salary received by them from the Government of the Union.

5. The question of opening branches of the Trade Representation, and of their location, shall be settled by a supplementary agreement between the Diplomatic Representation of the Union in Lithuania and the Ministry of Foreign Affairs of the Lithuania Republic.

6. The Trade Representation acts in all cases in the name of the Government of the Union of Socialist Soviet Republics and shall be responsible for all transactions entered into in the name of the Trade Representation by duly appointed persons. However, the Trade Representation shall not be responsible for the actions of the state economic organizations, which by the laws of the Union of the Socialist Soviet Republics are alone responsible for their actions, with the exception of cases where the responsibility for such actions is expressly assumed by the Trade Representations acting for and in the name of the Union of Socialist Soviet Republics.

7. The Trade Representation shall be exempt from registry in the Trade Register, but must publish in "Vyriausybes Ziniose" the names of the members of the Representation who are accredited with carrying on in the name of the Union foreign trade with Lithuania. Their credentials in respect to third parties shall be valid for all transactions until the publication of their cancellation by the Trade Representation in the same "Vyriausybes Ziniose."

8. Legal disputes that may arise in connection with the commercial transactions entered into by the Trade Representation in Lithuania shall be regulated in accordance with the material and procedural laws of Lithuania, but with the understanding that in case there is an agreement to that effect between the parties to a commercial contract, contracts signed in Lithuania, when the execution of such contracts is to take place in the Union of Socialist Soviet Republics, shall be subject to Soviet jurisdiction.

9. The commercial operations of the Trade Representation effected in Lithuania and binding for the Union are to be interpreted in accordance with Lithuanian laws and are subject to Lithuanian jurisdiction. However, in consideration of the responsibility of the Union of Socialist Soviet Republics for the transactions of its Trade Representation as stated in Art. 6 of the present Protocol, no preliminary court actions are to be taken in respect to the property of the Trade Representation or its branches.

10. Measures for the compulsory [*sic*] execution of court decrees which have become executory may be applied to the property of the Union of Socialist Soviet Republics in Lithuania, with the exception of articles which, according to the norms of international law, serve to sustain the state's sovereignty, or are essential for the official activity of the diplomatic and consular representations.

11. The present protocol is to come into force at the time of signing it, and is to remain in force until one of the parties expresses a desire to terminate it. In such case the provisions of the present protocol shall remain in force for six months from the date of filing such notice.

12. The present protocol is done at Kaunas on the Twenty-ninth Day of August, one thousand nine hundred and thirty-one, in duplicate in Russian and Lithuanian, both of which texts are authentic

[Signed] M. KARSKII

The Representative Plenipotentiary of the Union of Socialist Soviet Republics.

[Signed] ZAUNIAS

The Minister of Foreign Affairs of the Lithuanian Republic.

Appendix XXIII

EXTRACT FROM THE THESES ADVANCED AT THE SIXTH CONGRESS OF THE COMMUNIST INTERNATIONAL, HELD AT MOSCOW, AUGUST 17 TO SEPTEMBER 1, 1928

(*Kommunisticheskii Internatsional v Dokumentakh*, 1919–1932, pp. 797–814)

II. Attitude of the Proletariat towards War

7. War is inseparable from capitalism. The struggle against war, first of all, calls for a clear understanding of the essence of a given war, as well as of its causes. To the reactionary justification of war as an unavoidable natural phenomenon, and to the not less reactionary utopian plans for abolishing war by meaningless phrases or treaties, the revolutionary proletariat submits as a counter-project the Marx-Lenin theory as the only scientific basis of an effective struggle against war.

The cause of war, as a historical phenomenon, is to be found not in "the natural evil-nature" of men, and not in "poor" policy of the government, but in the fact that society is divided into classes,—exploiters and exploited. Capitalism—herein lies the cause of the latest modern wars. These wars are neither exceptions nor contradictory to the principles of capitalism, the right of private property in the means of production, or to the system of competition and exploitation,—they are direct results thereof.

Imperialism, as the monopolistic stage of capitalism, foments the conflicts of capitalism to such a degree that "peace" becomes merely a breathing spell for new wars. . . .

War is inseparable from capitalism, and consequently can be "abolished" only by means of destroying capitalism, *i.e.*, by overthrowing the class of capitalists—exploiters, by establishing the dictatorship of the proletariat, by building up socialism, and by abolishing classes. All other theories and suggestions, in spite of the degree of their apparent "practicability," are nothing but lies purposing to perpetuate the system of exploitation and wars.

It is on these grounds that Leninism denounces all pacifist theories of "abolishing wars" under capitalism, and shows to all working and oppressed masses the only way to achieve this end: the overthrow of capitalism.

8. Yet the overthrow of capitalism is impossible without violence, *i.e.*, without armed uprising and wars against the bourgeoisie. In our era of imperialistic wars and world revolution, revolutionary civil wars of the proletarian dictatorship against the bourgeoisie, wars of the proletariat against bourgeois states and world capitalism, as well as *national-revolutionary* wars of oppressed peoples against imperialism are unavoidable, as shown by Lenin. Hence, precisely for the reason that the revolutionary proletariat struggles for socialism and for abolition of wars, it cannot be opposed to every war.

Every war is nothing but a continuation of the policies of a given class by "different means." Consequently, the proletariat must carefully analyze the historical and political class significance of *each given war*, and must evaluate with particular care, from the standpoint of world revolution, the rôle of the dominating classes of all the countries participating in the war.

In our epoch, the following three types of wars may be distinguished: *firstly*, wars among imperialistic countries; *secondly*, wars of imperialistic counter-revolution against proletarian revolution, or against the countries where socialism is being established; *thirdly*, national-revolutionary wars, particularly of colonial countries, against imperialism, which wars may be identified with the wars of oppression waged by imperialists against these countries. . . .

On the basis of this Marxian analysis of wars, the proletariat must determine its attitude *ex principio*, as well as its tactics towards them. On the basis *of security* for its own government, and the transformation of imperialistic war into civil war against the bourgeoisie, the proletariat opposes wars among imperialistic countries. A similar position is maintained by the proletariat of imperialistic countries in case an oppressive war is waged by imperialists against national-revolutionary movements, first of all against colonial peoples, and, in case of open counter-revolutionary wars, against the dictatorship of the proletariat. Yet, the proletariat supports and wages national-revolutionary wars and socialistic wars against imperialism, and organizes the defense of national revolutions and of states where dictatorship of the proletariat prevails.

9. Prior to the establishment of the dictatorship of the proletariat, to determine proletarian tactics in its own country during the war, a

thorough analysis of the war in progress, as well as of all of its phases [*sic*], must be made: national wars may become imperialistic

Formal characteristics, such as, for instance, calling it an aggressive war cannot take place of an exact analysis of the nature of a given war. In such an imperialistic war as that of 1914, it is meaningless to be guided by such characteristics, which may only mislead the masses. Yet, in imperialistic wars against revolutionary states, such characteristics must be taken into consideration. not, in truth, from a strategical, but from a historical-political, standpoint The unlawful war is not that waged by the one who is first to attack, but by the one who represents reaction, counter-revolution, exploitation, and imperialism against national or proletarian revolution. . . .

10. Upon the attitude towards a given war taken by the proletariat *ex principio* depends also its position in regard to the "defense of the fatherland." The proletariat has no fatherland until it wins the political power and takes over the means of production from the hands of the exploiters. The expression "defense of the fatherland" is the most commonly used expression to signify *justification of war*. In wars waged by the proletariat or by a proletarian state against imperialism, the proletariat must defend its *socialistic fatherland*. In national-revolutionary wars the proletariat defends the country against imperialism. In imperialistic wars, however, it must most emphatically condemn the idea of "defense of the fatherland," which idea serves to protect exploitation and to betray socialism.

A. *Proletarian Opposition to Imperialistic War*

1. STRUGGLE AGAINST IMPERIALISTIC WAR BEFORE ITS INCEPTION

11. The struggle of the communists against imperialistic wars differs fundamentally from the "struggle against war" waged by pacifists of all shades. Communists do not distinguish the struggle against war from class struggle, and view it as an integral part of the general class struggle of the proletariat purposing to overthrow the bourgeoisie. They know that while the bourgeoisie is in power imperialistic wars are *unavoidable*. Hence the conclusion may be deduced that it is useless to carry on a special struggle against war. Moreover, social-democrats accuse communists of fomenting the inception of imperialistic wars to further revolution. This is both erroneous and senseless slander. In spite of the fact that communists are convinced of the inevitability of imperialistic wars, they by all means oppose and attempt to prevent them by means of proletarian revolution, this being done in the

interests of the working masses, from whom such wars will demand the most grave sacrifices. In this opposition the communists gather around themselves the masses, that they may transform the war, in case they cannot prevent its inception, into a civil war aiming to overthrow the bourgeoisie.

12. The primary duty of communists in their struggle against an imperialistic war is to unveil the bourgeois preparations for war, and to show to the masses at large the actual state of affairs. This means, first of all, that an intensive political struggle and propaganda must be carried on *against pacifism*. . . .

14. Along with the struggle against pacifism and against giddy "revolutionary" phraseology, communists, in their struggle against imperialistic wars, must carry out a series of duties of agitation and propaganda. . . .

15. This agitation and propaganda activity must coincide with the regular work of the party in the masses. These are among the most important problems germane to the struggle against imperialistic war previous to the moment of its inception. . . .

16. "The only possible means" to carry on the revolutionary war after the declaration of [imperialistic] war, according to Lenin, is the establishment of *illegal organizations*. . . .

17. At present, communist parties must confine all their work to the concentrated problem of preparation, solicitation, and organization of the masses for the struggle against imperialistic wars. . . .

2. STRUGGLE DURING IMPERIALISTIC WAR

18. The political program of the communists during imperialistic war is the same which the Communist Party, under Lenin's leadership, worked out and applied in its heroic struggle against the first world-wide imperialistic war. This program consists of the following basic principles:

(*a*) Refusal to defend imperialistic fatherland in this war; explaining to the workers and peasants the reactionary character of the war; most energetic struggle against all kinds of labor movements which either openly or secretly justify such war;

(*b*) Defeatism, *i.e.*, assisting in the downfall of its own imperialistic government in this war.

(*c*) True internationalism, *i.e.*, not "internationalistic" phraseology, not formal "agreements," but a revolutionary defeatist work of the proletariat in the warring countries purposing to overthrow the national bourgeoisie.

(*d*) Transformation of a war waged by imperialistic states into a civil war of the proletariat against the bourgeoisie [for the establishment of the] Dictatorship of the Proletariat, [and] of socialism, by means of revolutionary uprisings of the masses in the rear, and fraternization on the front lines

(*e*) [The conclusion of] a "democratic" or "just" peace while the imperialistic war is still in process is impossible without the taking over of the power by the proletariat in the warring countries. Therefore, the focal [*sic*] slogan [for communists] should be not peace, but proletarian revolution. Communists must carry on an energetic struggle against all appeals for peace, which appeals at a given moment may become most important idealistic weapons in the hands of the bourgeoisie, to which it might resort in order to prevent the transformation of the war into a civil one. . . .

19. "The transformation of the imperialistic war into a civil war" means, first of all, *revolutionary mass uprisings*. Communists categorically refuse to resort to the so-called "methods of struggle" against war which hinder the development of such uprisings. Consequently, they likewise denounce those individual acts which bear no connection to revolutionary mass activities, or which do not further their development, and oppose any propaganda in the labor movements "against war" sponsored by petty-bourgeois elements. Such suggestions as, for instance, "refusal to carry arms," or "refusal to fire," etc, are still widely made in the masses, and many workers seriously believe that by such means results can be achieved. Actually, however, they are meaningless and harmful. Communists must tell the workers that the struggle against war is not an individual act, and that revolutionary mass uprisings of workers and poor peasants are the best means for struggle, superior to all other means. By struggling against the above mentioned harmful suggestions, communists are developing in workers revolutionary heroism in the struggle against imperialistic wars.

20. *The problem of a general strike as a protest against war* is considered by communists from the same standpoint: the idea of transforming an imperialistic war into a civil one. They cannot isolate the problem of a general walk-out as one of the means of the struggle against war. As early as 1907 Lenin opposed the viewpoint of Hervé and denounced the general strike as a "panacea" when isolated from general class struggle waged by the proletariat. Enlightened by the experience of the World War, he gave to his viewpoint an even more definite form. Lenin's instructions to the [delegates to the] Hague

Conference remain fully in force, even at present: to reply to war by a walk-out is just as impossible as to reply to war by revolution in the most simple and most literal sense of these terms. Yet, if communists denounce the watch-word "general walk-out is the reply to war," and if they warn the workers against such illusions, which cause considerable damage to effective struggle against war, they by no means oppose general strike as one of the methods of struggle against war, and most categorically condemn refusal to resort to such methods as an expression of opportunism. Along with other mass uprisings (demonstrations, strikes in the factories working for defense, strikes in transport industries, etc.), the general walk-out, as the highest form of mass movement, is one of the most important weapons, and, while being a transition stage to the armed revolution, is in itself a phase in the process of transformation of the imperialistic war into a civil one. However, this transformation depends not only on the will of the party, but presupposes the existence of a general revolutionary situation, of the capacity of the proletariat to carry out mass uprisings, etc., which factors become more clearly defined not at the time of the declaration of war, but while the latter is in process. But even during war the general strike is not heaven sent, but is a result of a growing wave of revolutionary mass activities (demonstrations, partial strikes, etc.), and of persistent preparations on the part of the communists, often accompanied by considerable sacrifices. Undoubtedly general strike will bring revolutionary results much quicker during a war than in peace time, but it does not mean that it is easier to prepare and to organize it. On the contrary, the bourgeoisie will take her own counter measures: to the strike she will reply, either by the mobilization of the workers participating therein, or by the militarization of the industries. Consequently, even during war, communists cannot be limited to abstract propaganda for general strike, but must carry on their usual every-day revolutionary task in professional unions, defend economic demands of the workers, combining simultaneously these demands with anti-war propaganda, organize revolutionary committees in the factories to secure control over the lower organs of professional unions, and, after having achieved this, elect new instructing organs, etc. . . .

21. The slogan of *refusal of military service* (boycott to war), which is defended by some of the "radical" pacifists and "left" social-democrats, is also approached by communists from the same standpoint of the transformation of imperialistic war into a civil one. Communists oppose this slogan.

(*a*) The idea that imperialistic war can be rendered impossible by appealing to those of conscription age not to follow mobilization orders is just as illusory as the idea of "responding to war by a general walk-out." Propaganda by such a recipe only *weakens* the serious revolutionary struggle against war.

(*b*) If such a "mass boycott" should partially succeed, the result would be that the most energetic and most class-conscious workers would not be in the army. [Hence] the systematic revolutionary work in the army—which is one of the decisive factors in the struggle against war—would be rendered impossible.

Therefore, Lenin was perfectly right when, in 1922, he wrote: "To boycott war is merely a stupid phrase. Communists must accept any reactionary war."

These directions of Lenin, however, regarding boycott (refusal to "perform military duty," as a means of struggle against war) do not mean that communists must agitate the working masses to join the bourgeois army. It simply means that communists must struggle with all their energy against boycotts, which are harmful, for they create illusions; they must struggle for revolutionary work and organization in the bourgeois army, for armament of the proletariat, and for transformation of imperialistic war into civil war.

Therefore, when any question arises about joining the bourgeois army, or about refusal to perform military service (boycott), communist parties must suggest to workers and peasants that they denounce the slogan of refusal to perform military service, that they learn how to handle arms and how to carry on revolutionary work in the army, and how, at the proper moment, to turn their arms against the bourgeoisie.

In cases where, at the time of the declaration of war, extensive mass movement of refusal to join the army takes place, it is necessary for communists to subscribe to this movement, to give it a revolutionary character, to set forth concrete demands and slogans of a revolutionary nature, protesting against imperialistic war, and to make the maximum use of it for revolutionizing the masses. . . .

The situation permitting, communists must take advantage of this kind of mass movement to form guerilla troops for the immediate instigation of civil war. This applies particularly to countries where a strong national-revolutionary sentiment is in evidence. In such countries, at the time of declaration of war (especially in case of war against the Soviet Union), or during it, the situation permitting, communists should proclaim slogans of national-revolutionary uprisings

against imperialists and of the immediate formation of national-revolutionary guerilla units.

22. In countries where military service is not compulsory, the government will, at the beginning of war, carry on a wide campaign for enlistment in the army, and, in case of need, will declare general mobilization. Obviously, also in these countries, communists must struggle to transform imperialistic war into civil war. . . .

23. Of the greatest importance for the transformation of an imperialistic war into a civil one is the revolutionary work at the front. Here communists should not limit themselves to simple propaganda, but must prescribe slogans for action in accordance with the concrete situation prevailing.

(*a*) In connection with economic demands and complaints of the soldiers, it becomes necessary to look for collective refusal of service, or sabotage, as well as walk-outs of soldiers and sailors.

(*b*) The most important slogan for action at the front is that of *fraternization*. Its purpose is to unite soldiers, workers, and peasants from both sides of the trenches against bourgeois generals [*sic*]. The experience of the last war proved that mass fraternization unavoidably leads to the class distintegration of armies and to armed conflict between soldiers and officers. Communists in the army must organize fraternization by giving it a definite political character, envisaging primarily peace and organization of revolutionary forces in the army.

3. CIVIL WAR OF THE PROLETARIAT AGAINST THE BOURGEOISIE

24 The imperialistic war of 1914–1918 was transformed in a number of countries in Eastern and Central Europe into civil war, which brought victory to the proletariat in Russia. The lessons of the October Revolution are of decisive importance from the standpoint of the proletarian attitude towards war. They show:

(1) That in its imperialistic wars the bourgeoisie must itself hand over to the workers its arms, but that in defeat, etc., it loses its authority over massed armies;

(2) that an effective struggle against war calls for a preliminary revolutionizing of enlisted masses, *i.e.*, for preparation for civil war, and

(3) that civil wars unconditionally call for a thorough preparation of the proletariat and of its party. . . .

Proletarian uprisings in Shanghai in March, 1927, and in Canton in

December, 1927, offer important lessons for the proletariat, particularly for the nations of oppressed countries, colonies, and semi-colonies. . . .

25. These lessons are as follows:

(*a*) In regard to *antecedent conditions* for uprisings. There must exist a revolutionary situation, *i.e.*, a crisis for the power of the ruling class, caused by military defeats.

There must be extraordinary aggravation in the conditions of the masses and in their oppression; increase in the activity of the masses and in their readiness to fight for the overthrow of the government by revolution; and the presence of the experienced communist party having strong influence upon the dominating elements within the proletariat.

(*b*) In regard to preparation for uprisings· Uprisings depend not only on the directing party, but on the working masses as well. . . . There must be intensive work purposing the disintegration of bourgeois armies, which, at the time of uprisings, may result in a struggle for the preservation of the army. . . .

(*c*) In regard to the execution of the uprising· The rule must be that the uprising is not a pastime; once induced, it must be energetically continued until complete victory over the enemy is achieved

B. Proletarian Defense of the Soviet Union against Imperialism

26. Imperialistic war against the Soviet Union is an openly counter-revolutionary class war of the bourgeoisie against the proletariat. Its main purpose is the overthrow of the dictatorship of the proletariat, and the establishment of the White Terror for the working classes of the world. The basis for tactics of the proletarian masses in capitalist countries against such a war is the communist program for the struggle against imperialistic war: transformation of this war into a civil one. However, the methods and aim of this struggle, both prior to and during the war, must be adjusted to the concrete conditions of its preparation, as well as of its class character. Tactics undergo important changes, inasmuch as the "enemy" is an imperialistic country and not under proletarian dictatorship.

27. *Concretely,* in connection with the problem of propaganda during imperialistic war and during the preparation of war against the Soviet Union, the following must be noted:

(*a*) *Pacifism*—a screen for military preparation—will become their most important weapon. Therefore, it becomes necessary to increase the struggle against pacifism and its specific slogans; against the League of Nations, which will conduct the coming war against the

Soviet Union in the name of "civilization" and "peace", against the "realistic pacifism" which considers the Soviet Union and proletarian and colonial revolutions dangerous for "peace"; against "radical pacifism," which, in the guise of struggle against "any war" wishes to discredit the idea of defending the Soviet power. . . .

28. International [ly organized] working classes and working masses at large see in the Soviet Union their protector and are increasingly sympathetic with it. Taking into consideration the fact that the aim of imperialistic war against the Soviet Union will be understood by working masses much more readily than in 1914 . . . it may be said that the possibilities of the struggle against war have since grown considerably, and that there now exist data for carrying out much more important tactics.

(*a*) There is a possibility of preventing the inception of war by increasing class struggle, including revolutionary mass uprisings against the government, even prior to the declaration of war. . . .

(*b*) There is a possibility that the proletariat of the bourgeois country will transform the imperialistic war against the U.S.S.R. into a civil war against its own bourgeoisie much more readily than in a war among imperialists.

(*c*) Therefore, in spite of the fact that communists in the capitalist countries, in case of a war against the U.S.S.R., may denounce the slogan "reply by general walk-out," they must not overlook the possibility of taking advantage of the mass walk-out, even during mobilization, *i e.*, prior to the declaration of war.

(*d*) In case of armed attack upon the Soviet Union, communists in oppressed nations and in imperialistic countries must do all in their power to bring about uprisings of national minorities in Europe [*sic*] and in colonial and semi-colonial territories, and to organize national liberation wars against imperialistic enemies of the Soviets.

29. Inasmuch as an imperialistic war would be directed against the Soviet Union, the fatherland of the international proletariat, the tactics, as compared with those used in a "purely" imperialistic war, shall be changed as follows:

(*a*) The proletariat in imperialistic countries must not only struggle for the defeat of its own government in this war, but also actively pursue the victory for the Soviet Government.

(*b*) Therefore, its tactics and selection of the means for this struggle are determined not only by the interests of the struggle of classes in its own country, but also by the interests of the war-

fare at the front, which is nothing but the class war of the bourgeoisie *against the proletarian state.*

(*c*) The Red Army is not an "enemy" army, but an army of the international proletariat. During a war against the Union of Socialist Soviet Republics, the proletariat in capitalistic countries will not permit itself to become frightened by the bourgeoisie, accusing it of national betrayal, and will not refuse to support this army and to help it in its struggle against its own bourgeoisie as well

30. While in imperialistic countries the defense of the fatherland [for the proletariat] is not permitted [*sic*], in the state of the proletarian dictatorship this defense is a revolutionary duty. Here the defense rests with the armed proletariat of the Union of Socialist Soviet Republics. The victory of the October Revolution gave to the workers of all the world a socialistic fatherland—the Soviet Union. The defense of the Union of Socialist Soviet Republics against the international bourgeoisie concurs with class interests [of the proletariat] and is, for the international proletariat, a matter of honor.

The allies of the international proletariat, in defending the Union of Socialist Soviet Republics, are:

(1) Poor peasants, as well as the masses of middle-class peasantry *of the Union of Socialist Soviet Republics,*

(2) National-revolutionary liberation movements in colonial and semi-colonial countries.

31. The international policy of the Union of Socialist Soviet Republics, corresponding both to the interests of the proletariat in power in the Union of Socialist Soviet Republics and to the interests of the international proletariat, and most intimately binding every ally of the proletariat with the [idea of] proletarian dictatorship, and, finally, constituting the basis for taking advantage of the conflicts between capitalistic states,— is *a policy of peace.* Its purpose is to guard international revolution and to protect the constructive work of socialism, which revolutionizes the world by its very existence and growth; it consists in the maximum postponement of the armed conflict with imperialism. As regards the interrelations, as well as relations with colonies, of capitalistic states, their policy signifies a struggle against imperialistic wars, rapacious colonial crusades, and camouflaging pacifism. The peace policy of a proletarian state in no way signifies that the Soviets have come to terms with capitalism, as is claimed by social-democrats and their Trotzkist followers for the purpose of discrediting the Soviets in the eyes of the international proletariat. This [policy of peace] is merely another—in this situation a more advantageous—

form of the struggle against capitalism which has been consistently followed by the U.S.S.R. since the October Revolution.

32. The proletariat of the Soviet Union has little faith in the illusory possibility of a secure peace with the imperialists. It knows that an attack waged upon the Soviets by the imperialists is inevitable, and that wars of the proletarian states with bourgeois states, which are waged for the liberation of the world from capitalism, are *not only unavoidable but necessary* in the process of proletarian world revolution. Therefore its primary duty, as that of a warrior for socialism, consists of making all the necessary preparations for such a war,—political, economic, and military; of strengthening the Red Army, the powerful weapon of the proletariat, and of training the working masses at large in military science. Imperialistic states show an outrageous conflict between their policy of colossal armaments and their "olive-oiled" [*sic*] phrases concerning peace. The Soviet State knows no such conflict between preparation for defense in revolutionary wars and the consistency of its peace policy.

C. The Proletariat Supports and Wages National-Revolutionary Wars of Oppressed Peoples against Imperialism

35. In supporting a national-revolutionary war, the proletariat must apply only such tactics as are determined, primarily, on the basis of a concrete analysis of a given national-revolutionary war, or of the rôle played in it by separate classes, etc. . . .

37. From the teachings of Marx and Lenin, and from the experience of the national wars of recent years, the following rules of proletarian tactics used during the national-liberation wars may be deduced:

(*a*) The proletarian support of war, and, in some instances, its temporary coöperation with the bourgeoisie, must in no way signify renunciation of the class struggle. Even in cases where the bourgeoisie, together with the proletariat, may oppose imperialism, it remains a foe of the proletariat and uses it only in furthering its own interests.

(*b*) Therefore, under no conditions should the proletariat subscribe to the policy and tactics of the bourgeoisie, but should, without reservation, act independently, and, by following its own program and slogans, establish revolutionary organizations (party, professional unions, workers' militia, proletarian army units, etc.). Communists must prepare the masses for the inevitable betrayal

of the bourgeoisie, they must take every measure to safeguard the position gained by the proletariat; [finally] they must by all means hinder the bourgeoisie in struggling to gain its own ends, and [simultaneously] prepare to overthrow it.

(*c*) In national wars, where the bourgeoisie, or bourgeois government, plays a counter-revolutionary rôle (as in the struggle of Chinese laborers and peasants against the division of China by imperialists), communists must act to overthrow the bourgeois government, the revolutionary defense of the country being [in such cases] the slogan for their action.

38. The problem of national wars for countries having an *undeveloped* class differentiation, such, for instance, as Moroccans, Druses, Syrians, or Arabs, must be dealt with in a similar manner Here the patriarchal and feudal lords and leaders play a rôle analogous to that played by the bourgeoisie in the more advanced colonial countries. Temporary coöperation with them during a revolutionary struggle against imperialism is permissible, although there is always the danger that the imperialists will either buy them up, or transform the war, waged for liberation, into one favoring their own interests. Therefore, national wars of these peoples must become concurrent with the struggle against feudal officers and against the liquidation of feudalism.

39. The duties of the *international* proletariat in connection with wars of liberation of oppressed peoples, and during the suppression expeditions of imperialism against any national-liberation movement or revolution (with the exception of a few concrete instances), are the same as during the imperialistic wars against the Soviets:

(*a*) Struggle against wars of suppression by fomenting class conflicts for the purpose of transforming such wars into civil ones against the imperialistic bourgeoisie;

(*b*) a gradual resort to the tactics of self-annihilation in the imperialistic countries and [of the destruction of] its armies; struggle for the victory of the oppressed country, and support for its armies;

(*c*) sponsoring of the fraternization between the soldiers of the imperialistic and revolutionary armies in the colonies, as well as of the collective enlistment of soldiers in national-revolutionary armies;

(*d*) struggle by means of revolutionary mass demonstrations, first of all against the imperialists sending their navy and transports with military supplies to the colonies; struggle against prolongation of the military service of soldiers taking part in the war against

colonies, etc.; struggle against the increase of the military budget, and against loans by the imperialists to the counter-revolutionary governments and to the militarists in the colonies; struggle against imperialistic military preparations in concessions, as well as on railroads and along rivers in the colonies;

(*e*) opposition to the massacres instigated by imperialists in the colonies, as well as to the measures taken by them to support native counter-revolutionary governments in their suppression of the toiling masses. . . .

APPENDIX XXIV

APPENDIX XXIV

LIST OF TREATIES ENTERED INTO BY THE SOVIETS

AFGHANISTAN

Soviet Republic	Date	Substance of the Treaty or Agreement	Sb Deistv. Dog Vol, Yr; Nos · Page	L.N.T.S. Vol · Page	Refer in Text Page
RSFSR	Feb. 28, 1921	Treaty of Friendship	I, 1924; 3: 40 I–II, 1928, 4 10		13, 19, 59, 212, 216, 256, 257, 287
USSR	Aug. 31, 1926	Treaty of Neutrality and Non-Agression	IV, 1928, 155 11		265, 288
USSR	Nov. 28, 1927	Agreement regarding the air route Kabul-Tashkent	IV, 1928; 183 · 160		75
USSR	June 24, 1931	Treaty of Neutrality and Non-Agression	(*SZiR SSSR*, 1932, II, § 61, p. 75) [1]		
USSR	Sept. 13, 1932	Exchange of Notes on amicable settlement of disputes in boundary zones	(*Ibid*, § 254, p 337)		

[1] "SZiR SSSR" are the first letters of *Sobr Zak i Rasp. S.S.S.R.* used in the text as an abbreviation of *Sobranie Zakonov i Rasporiazhenii S.S.S.R.* (Collection of Laws and Ordinances of the U.S.S.R.)

ARMENIA

RSFSR	Dec. 2, 1920	Agreement regarding recognition of independence of Armenia	III, 1922; 79 · 14		
RSFSR	Sept. 30, 1921	Agreement regarding financial matters	II, 1921, 40: 3		
RSFSR Azerbeidzhan Georgia	Jan. 8, 1921 Jan. 14, 1922	Protocol on the acceptance of the Agreement concerning the administration of the Transcaucasian Railways	III, 1922; 77: 9		
RSFSR Azerbeidzhan Georgia	Apr. 11, 1922	Agreement regarding financial relationship	IV, 1923; 106. 5		

RSFSR Azerbeidzhan Georgia	May 24, 1922	Agreement regarding centralization of the administration of posts, telegraphs, telephone and radio	III, 1922, 78 12		255
RSFSR Azerbeidzhan Georgia	July 8, 1922	Protocol of the acceptance of the agreement of April 11, 1922	IV, 1923; 106. 6		

AUSTRIA

RSFSR UkSSR	July 5, 1920	Agreement regarding exchange of war prisoners	I, 1924, 34 · 213 I–II, 1928; 45. 173		112, 129 135, 255, 323
RSFSR UkSSR	Dec. 7, 1921	Provisional Agreement	I, 1924 · 2: 35	XX. 154	124, 147, 151, 156, 260, 287
RSFSR UkSSR	Dec 7, 1921	Supplementary Agreement to the agreement regarding exchange of war prisoners and repatriation of interned civilians	I, 1924; 35 214 I–II, 1928; 46 173		
USSR	Sept 8, 1923	Exchange of notes on extension of the Russo-Ukrainian-Austrian agreement to the Union of S S R	I, 1924; 1 · 34 I–II, 1928, 1 3	XX: 154	
USSR	Feb 25–26, 1924	Exchange of notes on recognition *de jure*	I–II, 1925, 101 5 I–II, 1928, 3 · 9		
USSR	Sept. 19, 1924	Agreement regarding legal assistance in civil cases	II, 1925, 113 32 I–II, 1928; 47 · 173		276
USSR	Apr 26, 1927	Exchange of notes on registration of trade marks	IV, 1928, 100 56		247

AZERBEIDZHAN

Soviet Republic	Date	Substance of the Treaty or Agreement	Sb Deistv Dog Vol, Yr, Nos Page	L N T S Vol Page	Refer in Text Page
RSFSR	Sept. 30, 1920	Treaty on military and economic union	I, 1921, 1: 1		252
RSFSR	Sept. 30, 1920	Agreement regarding uniting the policies relative to supplies and maintenance	I, 1921, 2: 3		
RSFSR	Sept. 30, 1920	Agreement regarding administration of posts, telegraph, telephone and radio	I, 1921, 3 5		
RSFSR	Sept. 30, 1920	Agreement regarding financial problems	I, 1921, 4 7		
RSFSR	Sept 30, 1920	Agreement regarding problems concerning foreign trade	I, 1921, 5 9		
RSFSR	Sept. 30, 1920	Agreement regarding maintenance of unified economic policies	I, 1921; 6: 10		
RSFSR Armenia Georgia	Jan 8, 1921 / Jan. 14, 1922	Protocol of acceptance of the agreement concerning the administration of the Transcaucasian Railways	III, 1922; 77 9		
RSFSR Armenia Georgia	Apr. 4, 1922	Agreement regarding financial relationship	IV, 1923; 106: 5		
RSFSR Armenia Georgia	May 24, 1922	Agreement regarding centralization of the administration of posts, telegraphs, telephones, and radio	III, 1922; 77: 12		
RSFSR Armenia Georgia	July 8, 1922	Protocol of acceptance of the agreement of April 11, 1922	IV, 1923; 106: 6		

BELGIUM

RSFSR	April 20, 1920	Agreement regarding repatriation of citizens	I, 1924; 36: 218 I–II, 1928; 48: 175		112, 129, 143, 255, 285

BUKHARA

RSFSR	Mar 4, 1921	Treaty of Union	II, 1921, 42 7		50, 143, 256
RSFSR	Mar 4, 1921	Economic Agreement	II, 1921; 43: 12		19
RSFSR	Aug 9, 1922	Economic Agreement	IV, 1923, 107 9		
RSFSR	Apr. 30, 1923	Agreement regarding administration of the flotilla on the Amu-Darya River	V 1923; 119. 5 I, 1924, 109 327		
RSFSR	May 31, 1923	Agreement regarding Customs	I, 1924, 68. 317 I–II, 1928; 81 219		272

CHINA

USSR	May 31, 1924	Treaty on General Principles for the settlement of general problems	II, 1925; 107 16 I–II, 1928, 19 30	XXXVII 176	145, 173
USSR	May 31, 1924	Agreement for the Provisional management of the Chinese Eastern Railway	II, 1925; 124 102 I–II, 1928, 110 327	XXXVII 194	270, 274
USSR	Aug. 8, 1924	Exchange of Notes regarding *de jure* recognition	II, 1925; 107 10		
USSR	Sept. 20, 1924	Agreement between the Government of the USSR and the Government of the three Autonomous Eastern Provinces of the Chinese Republic	V, 1930, 214 118		
USSR	Dec 3, 1929	Nikolsk Ussurisk Protocol regarding the settlement of the conflict over the Chinese Eastern Railway	VI, 1931; 221: 8		
USSR	Dec 22, 1929	Khabarovsk Protocol on settlement of the conflict over the Chinese Eastern Railway	VI, 1931; 221: 9		
USSR	Dec 12, 1932	Exchange of Notes regarding restoration of diplomatic and consular relations	VII, 1933, 245. 5		

CZECHOSLOVAKIA

Soviet Republic	Date	Substance of the Treaty or Agreement	Sb Deistv Dog Vol, Yr, Nos Page	L. N. T. S. Vol: Page	Refer in Text: Page
RSFSR	June 5, 1922	Provisional Agreement [on Establishment of Trade Relations]	I, 1924; 28 188 I–II, 1928, 38 145		124, 129, 141–158, 174, 260, 277, 288
UkSSR	June 6, 1922	Provisional Agreement [*idem*]	I, 1924, 29: 192 I–II, 1928, 39: 149		288

DENMARK

RSFSR	Dec 18, 1919	Agreement regarding mutual repatriation of nationals	I, 1921; 26. 139		112,255
USSR	Apr 23, 1923	Preliminary Agreement	I, 1924; 10: 63 I–II, 1928; 14: 20	XVIII: 16	20, 61, 124–129, 138, 143, 149–157, 174–175, 260, 270, 281
USSR	June 6, 1924	Exchange of notes regarding *de jure* recognition	II, 1925; 105. 12 I–II, 1928; 15 26	XXVII 150	174, 175, 261, 270, 287
USSR	Dec. 13, 1924 June 23, 1925 July 29, 1925	Exchange of notes regarding mutual recognition of Tonnage Measurement Certificates	III, 1927; 149. 235	XXXVI: 252	
USSR	Dec. 23, 1927	Exchange of notes regarding mutual registration of trademarks	IV, 1928; 170 57	LXX: 246	276
USSR	Jan. 15–24, 1929	Notes regarding tonnage measurement certificates (supplementary to notes of 1924 and 1925)		LXXXVIII: 325	

ESTONIA

RSFSR	Feb. 2, 1920	Treaty of Peace	I, 1921, 17: 100 I–II, 1928; 41. 153	XI 30	19, 23, 31, 37, 41, 54–61, 98, 99, 108, 113, 129, 143, 161, 190, 212, 238, 243, 253, 261, 263, 266, 295, 317, 319, 323
RSFSR	Apr 6, 1920	Agreement regarding option for Estonian nationality	I, 1921, 30 247		
RSFSR	Aug. 19, 1920	Agreement regarding the problem of refugees	I, 1921; 32: 163 I, 1924; 04 300		
RSFSR	Sept 17, 1920	Convention regarding direct railway passenger and freight traffic between the two countries	I, 1021, 35 174 I, 1924, 93 418		
RSFSR	Dec 2, 1920 Jan. 25, 1921	Provisional Postal Convention [Declaration of May 18, 1921]	I, 1924, 85 369	XI: 74	
RSFSR	Mar 16, 1921	Provisional Agreement on Telegraphic Communications [Declaration of April 2, 1921]	I, 1924, 84: 367		
UkSSR	Nov 25, 1021	Treaty respecting future relations	I, 1924; 31 207 I–II, 1928, 42: 166	XI 122	
UkSSR	Nov 25, 1921	Agreement regarding the procedure of option for Estonian (Ukrainian) nationality	I, 1924, 05: 301	XI 144	61, 182
RSFSR	May 9, 1922	Treaty regarding the rafting of timber	I, 1924; 75: 337 I–II, 1928; 93 271		285
UkSSR	May 27, 1922	Supplementary Protocol to the Treaty of Nov. 25, 1921	I, 1924, 32 211 I–II, 1928, 43 170		
W-RSSR RSFSR UkSSR	June 25, 1922	Sanitary Convention	I, 1924, 05: 432 I–II, 1928, 123: 356		277
UkSSR	Feb. 17, 1923	Supplementary Protocol to the Treaty of Nov 25, 1921	I, 1924. 33 212 I–II. 1928; 44 171		
USSR	July 5, 1923	Convention regarding through rail passenger and freight traffic	II, 1925; 127: 113		

ESTONIA

Soviet Republic	Date	Substance of the Treaty or Agreement	Sb. Deistv Dog Vol, Yr, Nos: Page	L.N.T.S Vol Page	Refer in Text: Page
USSR	*June 27, 1924*	Postal Convention	III, 1927, 142: 138		
USSR	June 27, 1924	Radio and Telegraphic Convention	III, 1927; 143 153		201
USSR	June 27, 1924	Convention regarding Telephonic Communications	III, 1927; 144: 158		273
USSR	June 27, 1924	Convention regarding Postal Money Orders	III, 1927, 145 163		
USSR	Oct. 29, 1925	Convention regarding through railway passenger and freight traffic	IV, 1928, 184: 162	LXVI 147	
USSR	Mar. 4, 1926	Exchange of Notes regarding mutual recognition of tonnage certificates	III, 1927; 153· 260	LXII: 77	
USSR	Aug. 8, 1927	Agreement regarding the settlement of frontier disputes	IV, 1928, 168 49	LXX 401	55, 268
USSR	Mar. 3, 1928	Agreement regarding the mutual protection of trademarks	V, 1930; 210· 88	LXXX: 401	276
USSR	May 17, 1929	Treaty of Commerce	VI, 1931; 235 69	XCIV· 323	13, 183, 212, 216, 270, 271, 287
USSR	Jan 20, 1930	Agreement regarding judicial assistance in civil matters	VI, 1931, 235: 15	CII: 225	276
USSR	{ Dec. 22, 1930 / Jan 8, 1931 }	Exchange of Notes regarding the amendment of the Agreement of Jan 20, 1930	(*SZiR SSSR*, 1931, II, § 116, p. 421)		
USSR	Oct. 22, 1931	Protocol amending the Protocol attached to the agreement of August 8, 1927	(*SZiR SSSR*, 1932, II, § 159, p 197)	CXXII: 349	
USSR	May 4, 1932	Treaty of non-aggression and amicable settlement of disputes	(*SZiR SSSR*, 1932, II, § 251, p 325)	CXXXI 297	266
USSR	June 16, 1932	Convention regarding conciliation procedure	(*SZiR SSSR*, 1932, II, § 251, p. 329)	CXXXI 309	268

FAR-EASTERN REPUBLIC (D.V.R.)

RSFSR	Nov. 15, 1920	Agreement regarding establishment of "zoological farms" in the region of Lake Baikal	I, 1921; 34: 172		
RSFSR	Nov. 30, 1920	Convention regarding direct railroad transportation	II, 1921, 67 120		
RSFSR	Nov. 30, 1920	Convention regarding conditions of navigation on inland boundary waterways	II, 1921; 68, 133		
RSFSR	Dec 30, 1920	Treaty on state boundaries	II, 1921; 53 78		
RSFSR	Feb. 17, 1922	Treaty on Economic Union	III, 1922, 83 21		252
RSFSR	Sept. 20, 1922	Agreement regarding passports	IV, 1923, 108 9		

FINLAND

RSFSR	Mar. 1, 1918	Treaty	*Izvestia*, Mar. 10, 1918		58
RSFSR	Oct 14, 1920	Treaty of Peace	I, 1921, 6 76 I-II, 1928; 35 130	III 0	23, 42, 63, 75, 105, 113, 143, 243, 262–266, 275, 317, 319, 323
RSFSR	Sept. 27, 1921	Agreement regarding timber rafting on Menalanioki and Tulemanioki Rivers	II, 1921, 65 124		
RSFSR	Oct 11, 1921	Agreement regarding timber rafting from the Rural Districts of Reppoh and Parosozero	II, 1921, 66 127		
RSFSR	Dec 14, 1921	Provisional Agreement regarding through rail passenger and freight traffic	III, 1922, 101 253 I 1924, 91 308	XVI: 222	
RSFSR	Mar 21, 1922	Agreement regarding protection and inviolability of the frontiers	III, 1922; 80 60		
RSFSR	June 1, 1922	Convention regarding measures for protection of the inviolability of the frontiers	III 1922, 90 61 I–II, 1928, 79 210	XVI: 318	

Soviet Republic	Date	Substance of the Treaty or Agreement	Sb. Dpstv Dog Vol, Yr, Nos Page	L N T S Vol Page	Refer. in Text Page
RSFSR	June 13, 1922	Provisional Agreement regarding Telegraphic Communications	III, 1022; 104: 287 I, 1924; 82: 362	XVI 350	201
RSFSR	June 22, 1922	Provisional Postal Agreement	IV, 1923; 118: 42 I, 1924; 83: 304	XVI: 362	
RSFSR	July 7, 1922	Agreement regarding the amendment of article 22 of the Treaty of Peace	IV, 1923, 114 27	XIX 100	
RSFSR	Aug. 12, 1922	Convention regarding repatriation	IV, 1923; 115. 28 I–II, 1928; 74: 198	XIX: 106	113
RSFSR	Aug. 12, 1922	Agreement relative to the mutual exchange of vessels in conformity with article 23 of the Treaty of Peace	V, 1923; 124: 24		143
RSFSR	Sept. 20, 1922	Convention regarding Fisheries in the Gulf of Finland	IV, 1923, 117 39 I–II, 1928, 86 248	XIX· 144	65
RSFSR	Oct 21, 1922	Agreement regarding fishing and seal fisheries in the Arctic Ocean	II, 1925; 116 60 I–II, 1928; 89: 259	XXIX 198	65
RSFSR	Oct. 28, 1922	Agreement regarding free transit through the Pechenga District for Russian Nationals	V, 1923; 121: 9 I–II, 1928, 75 206	XIX. 200	130, 131, 275
RSFSR	Oct. 28, 1922	Agreement regarding the maintainance of the channel, and regarding fishing on the watercourse forming part of the frontier in the Gulf of Finland	V, 1923, 122: 13 I–II, 1928, 87 250	XIX· 184	
RSFSR	Oct. 28, 1922	Agreement regarding floating of timber in watercourses	V, 1923, 123· 16 I–II, 1928, 88: 253	XIX 154	285
RSFSR	Oct 28, 1922	Agreement regarding fishing and seal fisheries in Lake Ladoga	II, 1925, 117 63 I–II, 1928; 90; 262	XXIX 212	65

RSFSR	Jan. 2, 4, 1923	Exchange of Notes on consular matters	III, 1927, 135 61		
RSFSR	Feb 12, 21, 1923	Exchange of Notes regarding certain exemptions from stamp duty		XIX. 220	
RSFSR	June 5, 1923	Agreement regarding the navigation of the Neva River	II, 1925, 125. 104 I–II, 1928, 116 330	XVIII: 204	273
USSR	July 28, 1923	Agreement regarding the maintenance [care] of the Gulf of Finland outside territorial waters, and pilotage service	II, 1925, 126. 110 I–II, 1928, 117 335	XXII· 102	61, 68, 69
USSR	June 18, 1924	Convention regarding Telegraphic Communications	II, 1925, 121 89 I–II, 1928; 104, 312	XXIX. 206	201
USSR	June 18, 1924	Convention regarding Telephone Communications	II, 1925, 122· 95 I–II, 1928, 105 318	XXIX 290	
USSR	June 18, 1924	Postal Convention	II 1925, 120 74 I–II, 1928, 103 298	XXIX 314	
USSR	June 18, 1924	Convention regarding through rail passenger and freight traffic	III, 1927, 152 238	XLVII 153	
USSR	June 18, 1924	Convention regarding mutual restitution of archives and public documents	III, 1927, 134: 50	XLVII 241	
USSR	Feb 20, 1925	Agreement regarding Postal Money Orders	III, 1927; 141: 134		
USSR	Mar. 29, 1927	Agreement regarding the amendment of article 7 of the Statute attached to the Convention of June 18, 1924, on through passenger and freight traffic	IV, 1928, 186 234	LXXI· 11	
USSR	Sept. 2, 1927	Notes regarding Provisional Amendment of the Convention of June 5, 1923		LXIX 75	
USSR	Nov 17, 1927	Exchange of Notes regarding amendment of clause 1, article 25 of the Statute attached to the Convention of June 18, 1924, on through passenger and freight traffic	VI, 1931, 241 147		

FINLAND

Soviet Republic	Date	Substance of the Treaty or Agreement	Sb. Deistv. Dog. Vol., Yr; Nos. Page	L. N. T. S. Vol. Page	Refer in Text. Page
USSR	Mar. 17, 1928	Agreement regarding the amendment of article 7 of the Agreement concerning the navigation on the Neva River of June 5, 1923	V, 1930, 217 145	LXXX 151	
USSR	Sept. 24, 1928	Exchange of Notes regarding prevention of conflicts on the Isthmus of Karelia	V, 1930; 198 38	LXXXII 63	268
USSR	Nov. 17, 1928	Notes modifying the Convention of June 18, 1924, on through passenger and freight traffic	(*SZiR SSSR*, 1930, II § 143, p. 381)	LXXVIII 472	
USSR	Apr. 13, 1929	Convention regarding customs supervision in the Gulf of Finland	V, 1930; 199: 41	XCVI: 93	68, 272
USSR	Apr. 13, 1929	Protocol extending the Convention regarding customs control in the Gulf of Finland with the Agreement of July 28, 1923, on maintenance [care] of the Gulf of Finland outside of the territorial waters	V, 1930; 200: 45	XCVI: 106	
USSR	Oct. 7, 1929	Declaration regarding the ratification of the *Protocol regarding the Amendment* of the Postal Convention	VI, 1931, 237: 87	XCVI 349	
USSR	Jan. 21, 1932	Treaty of Non-aggression and amicable settlement of conflicts	(*SZiR SSSR*, 1932, II, § 250, p. 314)		266
USSR	Feb. 22, 1932	Convention regarding conciliation procedure	(*SZiR SSSR*, 1932, II, § 250, p. 319)		
USSR	Nov. 30, 1932	Exchange of Notes regarding mutual registration of trademarks	*Sborn. Deistv. Dogov*, VII, 1933; 272 107		

USSR	Jan. 5, 1933	Convention regarding the amendment of Articles 3–5, 9–10, and 13 of the Convention of June 18, 1924, on through rail passenger and freight traffic	*SZiR SSSR*, 1933, II, § 120, p. 75		
USSR	July 4, 1933	Convention regarding deer	(*SZiR SSSR*, 1934, II, § 48, p. 73)		

FRANCE

RSFSR, UkSSR	Apr. 20, 1920	Agreement regarding mutual repatriation of nationals	I, 1921, 31: 156 I, 1924; 63: 295		112, 129, 143, 238, 255, 285
USSR	Oct 28, 1924	Exchange of telegrams regarding *de jure* recognition	I–II, 1928; 36. 143		
USSR	Nov. 29, 1932	Treaty of Non-aggression	(*SZiR SSSR*, 1933, II, § 118, p. 63)		266, 309
USSR	Nov. 29, 1932	Convention regarding conciliation procedure	(*Ibid*, p 68)		268

GEORGIA

RSFSR	May 7, 1920	Treaty of Peace	I. 1921, 11. 27		100
RSFSR	Dec. 9, 1920	Agreement on option	I 1921, 25. 138		100
RSFSR	May 21, 1921	Treaty of Union	III, 1922; 81: 15		
RSFSR	May 21, 1921	Agreement regarding financial problems	III, 1922, 82 20		
RSFSR, Armenia, Azerbeidzhan	Jan. 8, 1921 / Jan. 14, 1922	*Protocol regarding the acceptance of the* agreement concerning the administration of the Transcaucasian Railway	III, 1922; 77. 9		
RSFSR, Armenia, Azerbeidzhan	Apr. 11, 1922	Agreement regarding financial relationship	IV, 1923; 106. 6		

GEORGIA

Soviet Republic	Date	Substance of the Treaty or Agreement	Sb Deistv Dog. Vol., Yr.; Nos: Page	L N.T S Vol. Page	Refer in Text. Page
RSFSR Armenia Azerbeidzhan	May 24, 1922	Agreement regarding centralization of the administration of Posts, Telegraph, Telephone and Radio	III, 1922; 78. 12		
RSFSR Armenia Azerbeidzhan	July 8, 1922	Protocol regarding the acceptance of the agreement of April 11, 1922	IV, 1923; 106: 5		

GERMANY

RSFSR UkSSR	Mar. 3, 1918	Treaty of Peace			22, 30, 31, 97, 108, 236n, 250, 251, 265n, 329, 339
RSFSR	Apr. 19, 1920	Agreement regarding repatriation of prisoners of war and interned civilians	I, 1924; 40: 225	II. 64	112, 129, 143, 323, 324
RSFSR	Apr. 23, 1920	Agreement regarding the execution of the repatriation of prisoners of war	I, 1924; 41: 227		112, 129, 323
RSFSR	July 7, 1920	Supplementary agreement regarding repatriation of prisoners of war and interned civilians	I, 1924; 42 227	II: 86	112, 129, 323
RSFSR	Jan. 22, 1921	Supplementary agreement to the Agreement of April 19, 1920	I, 1924, 43: 229		112, 129, 323
RSFSR	Apr. 23, 1921	Agreement regarding repatriation	I, 1924; 46: 236	VI: 268	129
RSFSR	May 6, 1921	Provisional Agreement	I, 1924; 7: 54		61, 124, 129, 151-150, 238, 259, 260, 277, 287
RSFSR	May 6, 1921	Supplementary Agreement to Agreement of Apr. 19, 1920, regarding repatriation of prisoners of war and interned civilians	I, 1924; 44: 230	XII: 178	112, 129, 143, 323
RSFSR	May 6, 1921	Exchange of Notes regarding diplomatic couriers	II, 1922; 59: 94		129, 174

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RSFSR	Apr. 16, 1922	Treaty [of Rapallo on General Problems]	I, 1924; 8 58 I-II, 1928; 10. 15	XIX. 248	129, 149, 259, 303
RSFSR W-RSSR TrSFSR UkSSR	Nov. 5, 1922	Agreement regarding extension of the Agreement of April 19, 1920, to the Union Republics	I, 1924; 9. 60	XXVI: 388	129, 156
RSFSR	Apr. 23, 1923	Agreement regarding merchant vessels within the jurisdiction of the other contracting party	I, 1924; . 234		
USSR	July 29, 1924	Protocol regarding settlement of the Soviet-German Conflict	I-II, 1928; 12: 18		
USSR	Oct. 12, 1925	Treaty comprising the following Agreements 1. Conditions of residence and business; and legal protection; 2. Economic, 3. Railways; 4 Navigation, 5. Fiscal; 6 Commercial courts of Arbitration and 7 Legal protection of industrial property	III, 1927; 133 74	LIII. 7	61, 66, 135, 139, 141, 157, 183, 189, 191, 276
USSR	Oct. 12, 1925	Consular Treaty	III, 1927, 131. 19	LIII. 163	212, 217-234, 267-272, 287
USSR	Oct. 12, 1925	Agreement regarding legal assistance in civil matters	III, 1927; 132: 35	LIII: 227	
USSR	Apr 24, 1926	Treaty [of neutrality and non-aggression]	IV, 1928; 157 16	LIII: 387	265, 266
USSR	Dec. 21, 1928	Protocol regarding Annexes supplementary to the Treaty of Oct. 12, 1925	V, 1930, 204 56		270, 287
USSR	Jan. 25, 1929	Convention regarding conciliation procedure	V, 1930; 190. 10	XC: 219	268
USSR	Apr. 17, 1929	Exchange of Notes regarding tonnage measurement certificates	VI, 1931; 240 146	CIX: 327	247
USSR	Feb. 7, 1931 Mar. 20, 1931	Exchange of Notes regarding the amendment of the Agreement of Oct 12, 1925, on legal assistance in Civil Matters	(*SZiR SSSR*, 1931, II, § 114, p 417)		
USSR	June 24, 1931	Extension Protocol	(*SZiR SSSR*, 1933, II, § 11, p. 95)		268
USSR	May 28, 1932	Protocol regarding customs and tariff problems	(*SZiR SSSR*, 1932, II, § 209 [211], p 272)		

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GREAT BRITAIN

Soviet Republic	Date	Substance of the Treaty or Agreement	Sb Deistv Doc. Vol, Yr, Nos· Page	L N T S Vol Page	Refer. in Text: Page
RSFSR	Feb. 12, 1920	Agreement regarding repatriation of war prisoners	I, 1921; 20 120	I: 264	112, 143, 255
RSFSR	Mar. 16, 1921	Commercial Agreement	II, 1921, 45: 18	IV: 128	20, 61, 123–129, 138, 151, 157, 174, 258, 260, 286, 287
RSFSR	Aug 16, 1921	Agreement regarding the submarine cable between Lervick and Alexandrovsk	I, 1924; 5 - 47 III, 1922; 102. 279	XXXI. 86	
RSFSR	July 3, 1922	Exchange of Notes regarding the extension of the Commercial Agreement of March 16, 1921, to Canada	IV, 1923; 110 15	XIII: 38	
USSR	Feb. 1–8, 1924	Exchange of Notes regarding *de jure* recognition	II, 1925; 102 6		174
USSR	Oct. 3, 1929	Protocol regarding the proceedings for settlement of disputes	VI, 1931; 219· 5		
USSR	Apr 16, 1930	Provisional Commercial Agreement	VI, 1931; 229 37	CI: 409	270, 271, 287
USSR	May 22, 1930	Provisional Agreement on Fisheries in waters contiguous to Northern coasts of USSR	VI, 1931; 230· 43	CII· 103	
USSR	Dec 1, 1930 / Jan 19, 1931	Exchange of Notes regarding the extention of the Agreement of Apr. 16, 1930, to any of the Colonies of the United Kingdom	(*SZiR SSSR*, 1931, II, § 52, p. 375)	CVII. 548	

GREECE

USSR	Mar. 8, 1924	Exchange of Notes regarding *de jure* recognition	II, 1925; 103· 11		
USSR	June 11, 1929	Convention regarding Commerce and Navigation	I–II, 1928; 13: 19 VI, 1931; 231: 45		184, 194, 270

HEJAZ

USSR	Feb. 16, 1926	Correspondence regarding recognition of the Kingdom of Hejaz and Nedja by the Union of SSR	IV, 1928; 156· 14		

HUNGARY

RSFSR / UkSSR	May 21, 1920	Agreement regarding repatriation of war prisoners	I, 1921; 21 125		112, 129, 143, 285, 324
RSFSR / RkSSR	July 28, 1921	Agreement regarding repatriation of war prisoners and interned civilians	I, 1924, 37: 219 II, 1921; 56· 86		112, 129, 255, 285,
RSFSR / UkSSR with the participation of Latvia and of the International Red Cross	Oct. 3, 1921	Agreement regarding repatriation of prisoners	I, 1924; 38· 220 III, 1922, 92: 80 I, 1924, 39 - 222		323 113, 129, 324

ICELAND

USSR	June 22–24, 1926	Correspondence regarding the establishment of relations	V, 1930; 191· 12		
USSR	May 25, 1927	Exchange of Notes regarding the régime of the most favored nation	IV, 1928, 172 59	LXIII: 105	270

ITALY

Soviet Republic	Date	Substance of the Treaty or Agreement	Sb Deistv Dog Vol, Yr; Nos: Page	L N T S Vol: Page	Refer in Text: Page
RSFSR	Apr. 27, 1920	Agreement regarding exchange of war prisoners and interned civilians	I, 1921; 27: 141 I–II, 1928, 16 29		112, 143
RSFSR	Dec. 26, 1921	Preliminary Agreement [on Economic and Political Relations]	I, 1924, 11: 69		127, 129, 174, 260, 287
USSR	Feb. 7, 1924	Exchange of Notes regarding *de jure* recognition	II, 1925; 106. 15 I–II, 1928; 18 29		
USSR	Feb. 7, 1924	Treaty of Commerce and Navigation	II, 1925; 114: 35 I–II, 1928; 82: 219		60, 61, 124, 129, 138–162, 183, 202, 238, 270, 276, 287
USSR	Feb. 7, 1924	Customs Convention	II, 1925; 115: 49 I–II, 1928, 83 232		66, 139, 238, 272
USSR	June 19, 1926	Exchange of Notes regarding registration of trademarks by juridical and physical persons	IV, 1928; 171: 58		
USSR	Mar. 21, 1930	Exchange of Notes regarding exemption from Consular visas of certificates on the origin of goods	VI, 1931; 232. 50		
USSR	July 26, 1930	Exchange of Notes regarding the arrest of property belonging to a foreign state	VI, 1931; 224: 14		
USSR	June 2, 1931 Sept. 11, 1931	Exchange of Notes regarding Certificates of origin of goods	(*SZsR SSSR*, 1931, II, § 271; p. 540)		
USSR	Aug. 7, 1932 Sept. 20, 1932 Oct. 23, 1932	Exchange of Notes regarding Certificates of origin of goods	(*SZsR SSSR*, 1932, II, § 252, p. 335)		
USSR	May 6, 1933	Customs Convention	(*SZsR SSSR*, 1934, II, § 47, p. 67)		

JAPAN

DVR	July 15, 1920	Agreement regarding an Armistice between the Far-Eastern Republic [DVR] and Japan	in Kliuchnikov i Sabanin, *as cited*, Pt. III, p. 38		
DVR	July 16, 1921	Joint declaration regarding policies in the Far East [announced in the form of notes exchanged between the Parties]	*Ibid.*, p. 39		
USSR	Jan. 20, 1925	Convention regarding the general principles of mutual relations	III, 1927; 130: 10	XXXIV: 32	61, 66, 129–131, 149, 157, 158, 248, 270
USSR	Jan. 23, 1928	Convention regarding fisheries	V, 1930; 211: 89	LXXX: 341	
USSR	Aug. 17, 1929	Exchange of Notes regarding the mutual recognition of tonnage measurement certificates	VI, 1931; 242: 148		
USSR	Nov. 23, 1931	Agreement regarding the parcel post	(*SZsR SSSR*, 1932, II, § 208, p. 259)	CXXXII: 133	

KHOREZM

RSFSR	Sept 13, 1920	Treaty of Union	I, 1921; 9: 17 I, 1924; 27: 184		59, 143, 247, 256
RSFSR	Sept. 13, 1920	Economic Agreement	I, 1921; 10. 23		18
RSFSR	June 29, 1922	Economic Agreement	IV, 1923, 109: 13 I, 1924; 74: 336		
RSFSR	Apr. 30, 1923	Agreement regarding the administration of the flotilla on the Amu-Daria River	V, 1923, 119: 5 I, 1924, 92 418		

LATVIA

Soviet Republic	Date	Substance of the Treaty or Agreement	Sb. Deistv. Dog. Vol, Yr., Nos. Page	L N T S Vol. Page	Refer in Text Page
RSFSR	June 13, 1920	Agreement for Repatriation of Refugees	I, 1921; 28 143		100, 102
RSFSR	Aug. 11, 1920	Treaty of Peace	I, 1924; 13 75 I–II, 1928; 20: 37	II: 196	18, 24, 31, 32, 37, 54–59, 100, 113, 129, 143, 162, 190, 212, 243, 262, 263, 317, 323
RSFSR	Nov. 16, 1920	Agreement regarding repatriation of war prisoners	I, 1921; 29. 148		113
RSFSR	Feb. 26, 1921	Convention regarding through rail passenger and freight traffic	III, 1922; 99: 146 I–II, 1928; 111: 329		
RSFSR	Mar. 3, 1921	Provisional Postal-Telegraphic agreement	II, 1921; 70: 143 I–II, 1928; 95. 276		201
RSFSR	July 22, 1921	Agreement regarding option. Part I	II, 1921, 60· 98	XVII: 252	100
RSFSR	Nov. 6, 1921	*Idem*, Part II	III, 1922; 93. 84 I–II, 1928; 59: 177	XVII: 252	100, 105, 129
RSFSR	Nov. 6, 1921	*Idem*, Part III	III, 1922; 94: 88 I–II, 1928, 60: 177	XVII: 252	100, 105, 129
UkSSR	Aug. 3, 1921	Treaty [Political]	I, 1924, 14 86 I–II, 1928, 21: 48		162, 212
UkSSR	Aug. 3, 1921	Convention regarding Repatriation of Latvian refugees residing in the Ukraine	I, 1924; 49 244 I–II, 1928; 61 178		61
RSFSR	Jan. 12, 1922	Provisional agreement regarding Parcel Post	I, 1924; 78: 346 I–II, 1928; 96: 279		
RSFSR W–RSSR UkSSR	June 24, 1922	Sanitary Convention	I, 1924; 94 423 I–II, 1928; 121: 340	XXXVIII: 10	276, 277
RSFSR	Aug. 16, 1922	Protocol of an Agreement regarding exchange of persons under arrest and in prisons	IV, 1923; 112: 22		

USSR	Mar. 19, 1925	Exchange of Declarations regarding mutual acceptance of tonnage-measurement certificates	III, 1927; 150· 236	XXXVIII. 142	
USSR	Oct 29, 1925	Convention regarding through rail passenger and freight traffic between the USSR, Latvia, and Estonia	IV, 1928; 184 162	LXVI: 147	
USSR	July 19, 1926	Agreement regarding the inquiry into and settlement of conflicts in the frontier zone	IV, 1928; 164: 38	LIV: 155	55, 268
USSR	June 2, 1927	Agreement regarding legal assistance in civil cases	IV, 1928; 161: 31	LXVIII. 321	276
USSR	June 2, 1927	Treaty of Commerce	IV, 1928, 173: 61	LXVIII: 321	194, 183, 197, 202, 212, 216, 270, 271, 287
USSR	Oct. 10, 1927	Convention regarding arbitral tribunals in commercial and civil cases	V, 1930; 193 14	LXXXIV 47	
USSR	May 18, 1928	Supplementary Protocol to the Convention regarding arbitration tribunals in commercial and civil cases	V, 1930; 194 19	LXXXIV. 47	
USSR	Dec. 17, 1930 Jan. 14, 1931	Exchange of Notes regarding the amendment of the Agreement of June 2, 1927, on Legal Assistance in Civil Cases	(*SZiR SSSR*, 1931, II, § 115, p 420)		
USSR	Feb. 5, 1932	Treaty of Non-Aggression	(*SZiR SSSR*, 1932, II, § 248, p. 303)		266
USSR	June 18, 1932	Convention regarding conciliation procedure	(*SZiR SSSR*, 1932, II, § 249, p. 308)		

LITHUANIA

RSFSR	*June 13, 1920*	Treaty on Repatriation of Refugees	I, 1922; 28. 143		113, 129
RSFSR	June 30, 1920	Treaty on Repatriation of Refugees	I, 1922; 30: 151		113
RSFSR	July 12, 1920	Treaty of Peace	I, 1922, 13 50 I–II, 1928, 22. 50	III. 106	19, 24, 31–37, 59, 61, 103, 129, 143, 162, 212, 242, 262–263, 287, 317, 323
UkSSR	Jan. 28, 1921	Agreement regarding option for Lithuanian citizenship	I, 1924; 52 256		103, 129

LITHUANIA

Soviet Republic	Date	Substance of the Treaty or Agreement	Sb Deistv Doc Vol, Ye; Nos Page	L. N. T. S. Vol. Page	Refer in Text Page
UkSSR	Feb. 14, 1921	Treaty on Repatriation of Refugees	I, 1924; 53 · 260		61, 162
UkSSR	Feb. 14, 1921	Political Treaty	I–II, 1928; 23 68		212
RSFSR	June 28, 1921	Agreement regarding option for Lithuanian citizenship	II, 1921; 61: 102 I, 1924; 51: 251		103, 129
RSFSR	June 28, 1921	Protocol to above	II, 1922; 62. 106		
UkSSR	April 5, 1922	Supplementary Treaty to the Treaty of Feb. 14, 1921	I, 1924; 17 · 110 I–II, 1928, 24 72		
UkSSR	April 5, 1922	Agreement regarding provisional rules concerning the transportation of the luggage of persons opting for Lithuanian citizenship	I, 1924; 54 · 262		
USSR	Sept. 28, 1926	Treaty of Neutrality and Non-aggression	IV, 1928; 158. 19	LX: 145	265, 287
USSR	Sept. 4, 1928	Exchange of Notes regarding the most-favored-nation régime for customs and tariffs	V, 1930; 205: 70		270, 287
USSR	May 6, 1931	Protocol regarding renewal of the Treaty of Sept. 28, 1926	(*SZiR SSSR*, 1931, II, § 231, p 477)	CXXV: 255	
USSR	Aug. 29, 1931	Protocol regarding the Legal Status of the Soviet Trade Representation in Lithuania	(*SZiR SSSR*, 1932, II, § 105, p. 157)		46, 194, 268
USSR	July 4, 1933	Convention Defining Aggression	(*SZiR SSSR*, 1933, II, § p. 256)		

MEXICO

USSR	Aug. 4, 1924	Memorandum of the Mexican Ambassador in Berlin to the Soviet Representative regarding recognition *de jure*	I–II, 1928; 25. 77		

MONGOLIA

RSFSR	Nov. 5, 1921	Agreement regarding establishment of friendly relations	II, 1921; 47: 28 I–II, 1928; 26. 77		21, 36, 143, 145, 212, 216, 256, 257, 288
RSFSR	May 31, 1922	Protocol regarding immovable property	IV, 1923; 113: 25 I–II, 1928; 67: 178		
USSR	Oct. 3, 1924	Telegraphic Convention, with supplementary protocol	I–II, 1928; 97. 283		201, 273
USSR	Feb. 25, 1927	Protocol regarding prolongation of the Telegraphic Convention	IV, 1928; 181 137		201, 273

NORWAY

RSFSR	Sept. 2, 1921	Preliminary Agreement [on Economic and Political Relations]	II, 1921; 48. 32 I, 1924; 19 117	VII · 294	127, 143, 151, 174, 260, 287
RSFSR	Nov. 15, 1922	Agreement regarding the conditions of the Norwegian Loan to the RSFSR	IV, 1923; 116: 36 I–II, 1928, 84: 243		
USSR	Feb. 15, 1924	Exchange of Notes regarding *de jure* recognition	I–II, 1928; 28. 80		
USSR	Dec 15, 1925	Treaty of Commerce and Navigation	III, 1927, 139 114	XLVII: 10	60–66, 183, 190, 202, 212, 216, 270, 287
USSR	Apr. 9, 1926	Declaration on mutual recognition of tonnage-measurement certificates	III, 1927, 151 237	XLVIII: 185	
USSR	{ Oct. 26, 1927 Jan. 16, 1928 }	Exchange of Notes regarding mutual notification in the case of Nationals of either country being arrested in the other		LXX: 239	
USSR	Feb. 24, 1928	Convention regarding mutual protection of industrial property rights	V, 1930; 206: 72	LXXIX: 9	276

PERSIA

Soviet Republic	Date	Substance of the Treaty or Agreement	Sb Deistv Dog Vol, Yr; Nos. Page	L. N T. S. Vol Page	Refer. in Text Page
RSFSR	Feb. 26, 1921	Treaty of Friendship	II, 1921; 49: 36 I–II, 1928, 30 107	IX. 384	21, 33, 41, 130, 131, 138, 173, 212, 256, 257, 286, 288
RSFSR TrSFSR	April 25, 1923	Postal Convention	I, 1924; 79: 350 I–II, 1928; 98: 285	CX: 323	75, 201
RSFSR TrSFSR	April 27, 1923	Telegraphic Convention	I, 1924; 80: 352 I–II, 1928, 99. 288	CX 333	201
USSR	Feb. 20, 1926	Convention regarding mutual use of water from frontier rivers and waterways	III, 1927; 136: 64		55
USSR	Aug. 14, 1927	Exchange of Notes regarding special Commissaries in the boundary zone	IV, 1928; 165: 43		55
USSR	Oct. 1, 1927	Treaty of Guaranty and Neutrality	IV, 1928; 159: 23	CXII. 275	265, 288, 309
USSR	Oct. 1, 1927	Exchange of Notes regarding Commercial relations	IV, 1928; 174: 72		183, 190, 270, 271
USSR	Oct. 1, 1927	Customs Convention	IV, 1928; 175: 95		
USSR	Oct. 1, 1927	Exchange of Notes regarding Port Pehlevi	IV, 1928; 176 95		
USSR	Oct 1, 1927	Agreement regarding fisheries in the southern part of the Caspian Sea	V, 1930; 207 74	CXII: 297	
USSR	Oct. 1, 1927	Exchange of Notes in conformity with article 10 of the agreement regarding fisheries	V, 1930; 208. 84	CXII. 314	
USSR	Nov. 23, 1927	Agreement regarding the establishment of air transportation and communication	IV, 1928; 185. 233		77, 275
USSR	May 31, 1928	Convention regarding the crossing of frontiers by the inhabitants of adjacent districts	VI, 1931; 226: 19	CX: 343	132
USSR	Oct. 15, 1928 Nov 20, 1928	Exchange of Notes regarding frontier commissaries	V, 1930, 195: 19		
USSR	Mar. 10, 1929	Customs Convention	VI, 1931; 233: 52	CVII: 419	248, 272
USSR	Aug. 2, 1929	Agreement regarding parcel-post	VI, 1931; 236: 80	CIX: 99	201
USSR	Oct. 27, 1931	Convention regarding migration, commerce and navigation	(*SZzR SSSR*, 1932, § 188, p. 209)		

POLAND

RSFSR UkSSR	Oct. 12, 1920	Preliminary Treaty regarding Armistice and Peace	I, 1921, 14: 63	IV 8	23, 112, 113
RSFSR UkSSR	Feb. 24, 1921	Supplementary Protocol regarding article 1 of the Preliminary conditions of Peace	II, 1921; 54: 80		54, 59, 129
RSFSR UkSSR	Feb. 24, 1921	Agreement regarding repatriation	II, 1921; 63: 108 I–II, 1928; 68: 180	IV: 142	324
RSFSR UkSSR W-RSSR	Mar. 18, 1921	Treaty of Peace	I, 1924; 20: 121 I–II, 1928, 29. 81	VI 52	23, 33, 39, 54, 59, 104, 129, 143, 236, 254, 262, 263, 287, 317, 323
RSFSR W-RSSR UkSSR	June 1, 1921	Protocol and instructions for the Conciliation Committees regarding the settlement of conflicts in the frontier zones	II, 1921; 55 83		
RSFSR	Nov. 27, 1921	Provisional Agreement regarding the railroad transportation between Stolbtsy and Negoreloe	III, 1922, 100: 245		
UkSSR	Dec 17, 1921	Provisional Agreement regarding railroad transportation between Shepetovka and Zdolbunovo	I, 1924; 89. 382		
RSFSR W-RSSR UkSSR	Jan 24, 1922	Protocol regarding additional instructions for the Conciliation Committees	III, 1922; 88: 59		

POLAND

Soviet Republic	Date	Substance of the Treatd or Agreement	Sb Deistv Dog Vol, Yr, Nos. Page	L.N.T.S Vol: Page	Refer in Text Page
UkSSR	June 19, 1922	Provisional Agreement regarding railroad transportation between Volochisk and Podvolochisk	I, 1924; 90 · 392		
RSFSR, W-RSSR, UkSSR	Feb. 7, 1923	Sanitary Convention	II, 1925; 128: 118 I-II, 1928; 122: 341	XLIX: 285	
RSFSR, W-RSSR, UkSSR	May 24, 1923	Postal and Telegraphic Convention	IV, 1928, 182: 141	L · 341	201
USSR	Apr. 24, 1924	Convention regarding through rail passenger and freight traffic	V, 1930; 215 123	XXXVII · 34	287
USSR	July 18, 1924	Consular Convention	III, 1927; 133 · 38	XLIX: 201	212, 217, 221-231, 267, 287
USSR	Aug. 3, 1925	Agreement regarding settlement of conflicts in the boundary zones	III, 1927, 137 70		55, 268, 270
USSR	Apr. 10, 1932	Agreement regarding legal problems in *the boundary zones*	(*SZiR SSSR*, 1934, II, § 246, p 167)		
USSR	July 25, 1932	Treaty of Non-aggression	(*SZiR SSR*, 1933, II, § 98, p. 41)		266,309
USSR	*Nov. 23, 1932*	Convention regarding conciliation procedure	(*SZiR SSSR*, 1933, II, § 99, p. 46)		268
USSR	June 3, 1933	Convention regarding investigation and settlement of conflicts in the boundary zones	(*SZiR SSSR*, 1933, II, *§ 252, p. 229*)		

ROUMANIA

RSFSR	*Mar. 5-9, 1918*	Agreement regarding political and military matters	I, 1921, 15: 74 I-II, 1928; 31 113		187, 251
USSR	Nov. 20, 1923	*Agreement regarding* means and measures for prevention and settlement of conflicts that may arise concerning the Dniestr River	II, 1925; 112: 28 I-II, 1928; 69 191		132, 268, 295

SWEDEN

USSR	Mar. 15, 1924	Exchange of Notes regarding *de jure* recognition	II, 1925; 111 27 I-II, 1928; 40 153		
USSR	Mar. 15, 1924	Commercial Agreement	II, 1925; 118. 68 I-II, 1928; 92 · 267	XXV 252	66, 124, 130, 131, 138, 142, 150, 151, 156, 190, 260, 275
USSR	Sept. 12, 1924	Agreement regarding exchange of parcel post and letters of declared value	II, 1925; 123: 98 I-II, 1928; 106. 322	XXXI. 76	272
USSR	July 21, 1926	Mutual recognition of the registration of trademarks	IV, 1928, 178: 114	LVII 9	
USSR	Feb. 2, 1927	Exchange of Notes regarding Consular Matters	IV, 1928, 163. 35		212, 267
USSR	Oct. 8, 1927	Convention regarding the legal status of the Soviet Trade Representation	V, 1930; 209: 85	LXXI 411	191, 194, 267, 270

SWITZERLAND

USSR	Apr. 14, 1927	Exchange of Notes regarding settlement of the conflict between the two countries	IV, 1928; 160. 27		301

TURKEY

Soviet Republic	Date	Substance of the Treaty or Agreement	Sb Deistv Dog Vol, Yr; Nos Page	L N T S Vol: Page	Refer in Text Page
Georgian SSR	June 4, 1918	Treaty of Peace and Friendship (*never ratified*)	in Kliuchnikov i Sabanin, v. II, p. 437.		
RSFSR	Mar. 16, 1921	Treaty [of Friendship]	II, 1921; 52 · 72 I–II, 1928; 32 114		21, 32, 41, 54, 105, 129, 130, 138, 143, 145, 159, 162, 256, 257, 287
RSFSR	Mar. 28, 1921	Convention regarding the Repatriation of War and Civil Prisoners	II, 1921; 64 . 121 I, 1924; 58: 279		112, 129, 142, 143
UkSSR	Sept. 17, 1921	Convention regarding the Repatriation of War and Civil Prisoners	I, 1924; 59: 281		129
TrSFSR RSFSR	Oct. 13, 1921	Treaty of Friendship	I, 1924; 24: 160 I–II, 1928; 33 . 120		129, 130, 132, 162, 187
UkSSR	*Jan. 21, 1922*	Treaty of Friendship	I, 1924, 25 · 167 I–II, 1928; 34 · 126		288
Georgian SSR	Mar. 20, 1922	Convention regarding the crossing of state boundary	I, 1924, 57: 276		132, 284
Georgian SSR	Mar. 20, 1922	Convention regarding use of pastures	I, 1924; 70: 321		132
TrSFSR RSFSR	July 9, 1922	Postal-Telegraph Convention	I, 1924; 81: 355 I–II, 1928; 100: 291		201, 284
RSFSR TrSFSR	*July 9, 1922*	Railroad Convention	V, 1930; 216: 138		
USSR	Dec. 17, 1925	Political Treaty	III, 1927; 129 9		21, 248, 265, 309
USSR	May 31, 1926	Protocol extending term for changing nationality by immigration	IV, 1928, 162: 34		
USSR	Jan. 8, 1927	Convention regarding using water from the boundary rivers and waterways	V, 1930; 196: 26		

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USSR	Mar. 11, 1927	Commerce Treaty	IV, 1928; 177 . 100		66, 183, 190, 191, 270, 288
USSR	Aug 6, 1928	Convention regarding the use of pastures	V, 1930; 197 · 32		132
USSR	Aug. 6, 1928	Convention regarding the prevention of the spread of epizootics over the Georgian-Turkish boundary line	VI, 1931; 234: 59		132
USSR	Aug. 6, 1928	Convention regarding the crossing of the boundary line by the inhabitants of the boundary zones	VI, 1931; 227: 24		
USSR	Aug. 6, 1928	Convention regarding the settlement of conflicts in the boundary zones	VI, 1931; 228 . 29		132, 218
USSR	Dec. 17, 1929	Protocol regarding an extension of the term of the Political Treaty of Oct 17, 1925	VI, 1931; 223: 11		
USSR	{ Nov. 25, 1930 Dec. 25, 1930 }	Exchange of Notes regarding the classification of visits by men-of-war	(*SZiR SSSR*, 1931, II, § 53, p. 377)		
USSR	Mar. 7, 1931	Protocol regarding the amendment of § 2 of the Protocol of Dec. 17, 1929	(*SZiR SSSR*, 1931, II, § 232, p. 480)		
USSR	Mar. 16, 1931	Treaty of Commerce and Navigation	(*SZiR SSSR*, 1931, II, § 247, p 491)		270
USSR	Oct. 30, 1931	Protocol regarding the amendment of § 2 of the Protocol of Dec. 17, 1929	(*SZiR SSSR*, 1932, II, § 209, p 207)		

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UKRAINE

RSFSR	*Dec. 28, 1920*	Treaty of Union	I, 1921, 8: 15		

URUGUAY

USSR	Aug. 21–22, 1926	Exchange of Notes regarding *de jure* recognition	V, 1930, 192 · 13		

WHITE-RUSSIA

Soviet Republic	Date	Substance of the Treaty or Agreement	Sb Deistv. Dog Vol, Yr, Nos Page	L. N. T. S Vol. Page	Refer in Text Page
RSFSR	Jan. 16, 1920	Treaty of Union	I, 1921; 7 12		253
RSFSR	July 26, 1921	Agreement regarding Financial Problems	II, 1921; 41 5		
RSFSR	Jan. 19, 1922	Agreement regarding the participation of the White-Russian SSR in the Federal Land Committee	III, 1922; 80 16		
RSFSR	Aug 9, 1922	Economic Agreement	III, 1922, 107 5		

YEMEN

USSR	Nov. 1, 1928	Treaty of Friendship and Commerce	VI, 1931, 220. 6		

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MULTIPARTITE AGREEMENTS TO WHICH THE SOVIET STATE HAS BECOME A PARTY

SSSR	Dec. 21, 1904	Convention for the Exemption of Hospital Ships from Harbor Dues and Taxes, and Final Act	I–II, 1928; 126 360	(98, *Br. and For St. Papers*, p. 624)	269
SSSR	July 6, 1906	Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field	I–II, 1928; 126 360	(99, *Br and For St. Papers*, p. 968)	269, 327
SSSR	Oct. 18, 1907	Convention for the Adaptation of the Principles of the Geneva Convention to Maritime War	I, 1921; 38 239	(100, *Br. and For. St. Papers*, p. 415)	269, 338

SSSR	Oct. 11, 1909	Convention with Respect to the International Circulation of Motor Vehicles	III, 1927; 154: 261	(102, *Br. and For St Papers*, p 64)	273
SSSR	July 7, 1911	Convention for the Preservation and Protection of Fur Seals	III, 1927, 140 129	(104, *Br. and For. St. Papers*, p 175)	276
RSFSR	June 20, 1920	Convention for the Establishment of the International Institute of Refrigeration	IV, 1928; 175 115	VIII 68	276
SSSR	Oct. 21, 1920	Convention Modifying the Convention and Regulations of May 20, 1875 on the International Uniformity and Perfection of the Metric System	IV, 1928, 180 122	XVII. 45	
SSSR	Aug. 28, 1924	Universal Postal Union, with Final Protocol	III, 1927, 146. 172	XL 19 and XL 40	273
SSSR	Aug. 28, 1924	*Ibid*, Agreement Concerning Letters and Parcels of Declared Value	III, 1927; 147 208	XL 249	
SSSR	Aug. 28, 1924	*Ibid.*, Agreement Concerning Money Orders	III, 1927; 148 226	XL: 437	
SSSR	Jan. 25, 1925	Agreement for the Creation of an International Office for Dealing with Contagious Diseases of Animals	V, 1930; 213 110	LVII 135	
SSSR	June 17, 1925	Protocol Prohibiting the Use in War of Asphyxiating, Poisonous, or Other Gases and of Bacteriological Methods of Warfare	V, 1030, 187. 1	XCIV. 65	270, 333
SSSR	Aug. 19, 1925	International Convention for the Suppression of the Contraband Traffic in Alcoholic Liquors	V, 1030. 201 40	XLII. 73	68
SSSR	Dec. 31, 1925	The Baltic Geodetic Convention	V, 1930, 212 100	LXXIX 107	273
SSSR	Apr. 24, 1926	*Convention on Road Traffic*	VI, 1931, 213. 150	XCVII 83	273
SSSR	June 21, 1926	Sanitary Convention	V, 1930, 218 148	LXXVIII 220	278

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MULTIPARTITE AGREEMENTS TO WHICH THE SOVIET STATE HAS BECOME A PARTY

Soviet Republic	Date	Substance of the Treaty or Agreement	Sb. Deistv Dog. Vol, Yr; Nos· Page	L N. T S Vol: Page	Refer in Text: Page
SSSR	Aug. 27, 1928	Treaty for the Renunciation of War as as an Instiument of National Policy	V, 1930; 188 5	XCIV· 57	269, 309
SSSR	Sept. 22, 1928	Protocol Modifying the Regulations Annexed to the Telegraphic Convention of St. Petersburg	VI, 1931, 238: 89	LXXXVIII· 347	273
SSSR	Feb. 9, 1929	Protocol regarding Putting into Force the Treaty for the Renunciation of War	V, 1930, 189: 4	LXXXIX· 371	
SSSR	Apr. 20, 1929	Convention on the Suppression of Counterfeiting Currency, and Protocol	VII, 1933, 262. 40	CXII: 371	276
SSSR	June 28, 1929	Universal Postal Convention	VI, 1931; 239· 92	CII: 245	273
SSSR	July 27, 1929	Convention for the Amelioration of the Condition of Wounded and Sick in Armies in the Field	(*SZiR SSSR*, 1932, II, § 60, p 33)		270, 327
SSSR	July 5, 1930	International Load Line Convention	(*SZiR SSSR*, 1933, II, § 150, p. 111)		
SSSR	Aug. 1, 1930	Convention on Anti-Diphtheritic Serum	(*SZiR SSSR*, 1932, II, § 8, p. 84)		
SSSR	Oct. 23, 1930	Agreement concerning Manned Lightships not on their Stations	(*SZiR SSSR*, 1931, II, § 270, p 524)		272
SSSR	Oct. 23, 1930	Agreement concerning Maritime Signals	(*SZiR SSSR*, 1931, II, § 272, p 544)		267
SSSR	July 3, 1933	Convention defining Aggression	(*SZiR SSSR*, 1933, II, § 241, p. 155)		
SSSR	July 4, 1933	Convention defining Aggression	(*SZiR SSSR*, 1934, II, § 46, p. 61)		267

Abbreviations

of publishers:

Izd. Kom. Un. Sverdlova	—Izdanie Kommunisticheskogo Universiteta Imeni Ia. M. Sverdlova.
IKA	—Izdatel'stvo Kommunisticheskoi Akademii.
Gosizdat	—Gosudarstvennoe Izdatel'stvo.
Izd NKIust. R S.F.S.R.	—Iuridicheskoe Izdatel'stvo Narodnogo Kommissariata Iustitsii R.S.F.S.R.
Izd. NKIust. Uk.S S.R.	—Iuridicheskoe Izdatel'stvo Narodnogo Kommissariata Iustitsii Uk.S.S.R.
Izd. NKID	—Izdanie Litizdata Narkomindela.
Izd. Sots. Akad.	—Izdatel'stvo Sotsialisticheskoi Akademii.
Krasn. Nov'	—Izdatel'stvo "Krasnaia Nov'."
Prometei	—Kooperativnoe Izdatel'stvo "Prometei."
Ek. Zhizn'	—Izdatel'stvo "Economicheskaia Zhizn."

of periodicals:

Ezh. Sov. Iust.	*—Ezhenedel'nik Sovetskoi Iustitsii.*
Vestn. Sov. Iust.	*—Vestnik Sovetskoi Iustitsii.*
Mezhd. Zhizn'	*—Mezhdunarodnaia Zhizn'.*
Mezhd. Pravo.	*—Mezhdunarodnoe Pravo.*
Vopr. Vozd. Prava	*—Voprosy Vozdushnogo Prava*
Sov. Pravo	*—Sovetskoe Pravo.*
Rev. Prava	*—Revoliutsiia Prava.*
Vl. Sov.	*—Vlast' Sovetov.*
Pr. i Zh.	*—Pravo i Zhizn'.*
Sov. Str.	*—Sovetskoe Stroitel'stvo.*
Zhizn' Natz.	*—Zhizn' Natsional'nostei.*

I

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